MONTANA LEGISLATIVE HISTORY

Chapter 120 19 74

Bill H 592 S _____ Original bill & history ____C

H. Committee on State Administration			S. Committee on State Administration		
Hearing Date(s)	March 08	✓ C	Hearing Date(s)	Jan 14	✓ C
	_____	____C		_____	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	March 08	✓ C		Jan 14	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

FINAL STATUS SHEET
DATE: March 16, 1974
PAGE: 5

1974 LEGISLATIVE SESSION

COMMITTEE ON STATE ADMINISTRATION

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
HB 22	Held Over	1-23-74	1-23-74					1-23-74	
HB 147	Held Over	1-11,14-74 1-16-74	1-16-74	-- Transferred to Senate Taxation Committee.					
HB 280	2-22-74	3-6-74	3-6-74	--- The committee voted to pass consideration of this bill.					
HB 333	1-14-74	1-16,18-74	1-18-74						1-18-74
HB 421	1-22-74	2-22-74	2-22-74						2-22-74
HB 439	Held Over	1-18,23-74	1-23-74						2-23-74
HB 577	1-23-74	2-22-74	2-22-74				2-22-74		
HB 592	Held Over	1-14-74	1-14-74					1-14-74	
592	Re-referred	2-20-74	2-20-74					2-20-74	
HB 598	2-2-74	2-27-74	2-27-74				2-27-74		
HB 599	2-5-74	3-1-74	3-1-74				3-1-74		
HB 632	2-22-74	3-5-74	3-5-74				3-5-74		
HB 661	1-28-74	2-25-74	2-25-74					2-25-74	
HB 664	1-30-74	2-25-74	2-25-74				2-25-74		
HB 665	2-21-74	3-4,6-74	3-6-74					3-6-74	
HB 670	1-23-74	2-20-74 3-1-74	3-1-74					3-1-74	
HB 671	1-30-74	2-25-74	2-25-74				2-25-74		

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF THE MEETING
STATE ADMINISTRATION COMMITTEE
MONTANA STATE SENATE

January 14, 1974

The third meeting of the State Administration Committee was called to order by Chairman David F. James on Monday, January 14, 1974 in Room 410 of the State Capitol Building at 8:05 a.m.

ROLL CALL: All members were present with the exception of Senator Nees and Senator Sorenson who were absent; and Senator Darrow and Senator McDonald who were excused.

SENATE BILL NO. 488: An act re-establishing the position of Budget Director within the Office of the Governor.

Senator Bill Bertsche, District 13, chief sponsor of the bill, explained it to the Committee. Senator Bertsche stated that at the present time the Budget Director is appointed by the State Comptroller. He thought that since the Budget Director is in charge of the executive budget, the Governor should be allowed to appoint this officer.

Mr. Keith Colbo, Department of Revenue, also testified in favor of SB 488. He stated that it is difficult for the Budget Director, who is now under the Department of Administration, to be accountable to so many different people, and that for efficient government it would be more advisable for the Budget Director to answer only to the Governor.

There was no one present to testify in opposition to this bill. Senator Bennett made a motion that the committee recommend Senate Bill No. 488 DO PASS. The motion was seconded by Senator Devine and carried unanimously.

HOUSE BILL NO. 592: An act revising the laws relating to the Department of Institutions.

Representative Gary Marbut from District 18, chief sponsor of this bill, was present to testify before the Committee. He stated that he and seven other people served on a subcommittee to study Title 82A, and that HB 592 is one of the bills generated by that committee. He also stated that Senator Story, a member of the State Administration Committee had been in consultation with him regarding this bill.

Mr. Richard Llewellyn, Government Operations Unit, stated that he had been assigned the task of updating all of the Recodification Bills. He said that HB 592 has been reviewed by four attorneys and that the only changes made in the Dept. of Institutions laws were those necessary because of the Executive Reorganization Act. Mr. Llewellyn pointed three minor substantive changes as follows:

(1) on pages 45 and 46, Section 80-1407.1 was added;
(2) Section 80-1409 is repealed by this act; and
(3) Section 80-2610, on pages 73 and 74.

Mr. Patrick Melby, also from the Government Operations Unit, testified in favor of House Bill 592. Mr. Melby proposed some amendments to this bill, which are attached and titled "Schedule A". He stated that most of the number changes had become necessary because of the New Montana Criminal Code that went into effect after this bill was drafted.

Mr. Ed Kellner, Director of the Department of Institutions, stated that he supports HB 592 and concurs with everything that was said about the bill. He knew of no one who had reservations about it, and there were no witnesses to testify in opposition to this bill. Questions and a discussion by the Committee members followed these presentations.

Senator Story made a motion that the committee adopt the proposed amendments which are attached and titled, "Schedule A". The motion was seconded by Senator Rosell, and carried unanimously.

Senator Story then made a motion that the committee recommend House Bill 592 DO PASS AS AMENDED. The motion was seconded by Senator Rosell, and carried unanimously. Senator Story was appointed to carry this bill on the floor.

HOUSE BILL NO. 147: "Realty Transfer Act"

Chairman James stated that the Senate Taxation Committee had requested that this bill be referred to that Committee. It was decided that since a hearing on this bill had already been scheduled for Wednesday, January 16, it would be best not to change it.

Senator Stanley Nees, Chairman of the Taxation Committee, said that he would notify the members of his committee about the proposed hearing, and urge that as many of them as possible attend. Senator James stated that if it was agreeable with the State Administration Committee, the bill would be referred to Taxation after the hearing. The members decided that it would be advisable to send a synopsis of what had happened in previous hearings on this bill, along with a record of what each member of the State Administration Committee would recommend concerning this bill.

There being no further business before the Committee, the meeting was adjourned at 9:00 a.m.

James

DAVID F. JAMES, Chairman

Schedule A

Proposed Amendments to Conform H.B. 592 to Legislation Enacted in the 1973 Legislative Session

Amend on page 58, after the word and punctuation "Montana." on line 12, by inserting the following:

"~~Provided, however, the~~ The center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state."

Further amend on page 78, line 15, by deleting the figure "94-9822" and inserting in lieu thereof the figure "95-3204"

Further amend on page 78, after the figure and punctuation "1947," on line 15 and continuing through the word "and" on line 16, by deleting the material therein in its entirety

Further amend on page 78, line 18, by deleting the figure "94-9823.1" and inserting in lieu thereof the figure "95-3204"

Further amend on page 80, line 6, by deleting the figure "94-9823" and inserting in lieu thereof the figure "95-3205"

Further amend on page 80, line 8, by deleting the figure "94-9823" and inserting in lieu thereof the figure "95-3205"

Further amend on page 80, line 25, by deleting the figure "94-9824" and inserting in lieu thereof the figure "95-3206"

Further amend on page 81, line 2, by deleting the figure "94-9824" and inserting in lieu thereof the figure "95-3206"

Further amend on page 81, line 22, by deleting the figure "94-9825" and inserting in lieu thereof the figure "95-3207"

Further amend on page 81, line 24, by deleting the figure "94-9825" and inserting in lieu thereof the figure "95-3207"

Further amend on page 83, line 3, by deleting the figure "94-9828" and inserting in lieu thereof the figure "95-3210"

Further amend on page 83, line 5, by deleting the figure "94-9828" and inserting in lieu thereof the figure "95-3210"

Further amend on page 84, line 21, by deleting the figure "94-9832" and inserting in lieu thereof the figure "95-3214"

Further amend on page 84, line 23, by deleting the figure "94-9832" and inserting in lieu thereof the figure "95-3214"

Further amend on page 86, line 16, by deleting the figure "94-9833" and inserting in lieu thereof the figure "95-3215"

Further amend on page 86, line 18, by deleting the figure "94-9833" and inserting in lieu thereof the figure "95-3215"

Further amend on pages 86 through 88, beginning with line 24 on page 86 and continuing through line 23 on page 88, by deleting the material therein ~~in its entirety~~ and renumbering the subsequent sections accordingly.

Further amend on page 92, between lines 15 and 16, by inserting the following:

"~~(d)~~-(4) The expenses of sending the defendant to the custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of ~~public~~ institutions, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover from the estate of the defendant, if he has any, or from a town, city or county bound to provide for and maintain him elsewhere."

Further amend on page 101, line 14, by deleting the figure "94-9826" and inserting in lieu thereof the figure "95-3208".

DATE January 14, 1974

COMMITTEE ON STATE ADMINISTRATION BILL NO. HB 592, SB 488

VISITOR'S REGISTER

NAME	REPRESENTING	BILL NO	Check One	
			Support	Oppose
Dick Harper	Leg Council			
Richard Llewellyn	Government Operations Unit	H 592		
Ed Kelleher	Dept of Administration	HB 592		
Rep. GARY R. MARBUT	House of Representatives	HB 592	X	
Larry D'Arcy	Dept. of Admin.	HB 592		
Patrick Melby	Government Operations Unit	H.B. 592		
Keith P. Colt	Dept. of Revenue	H.B. 488	✓	
Bill Bertsche	State Revenue	H.B. 488		

(Please leave prepared statement with Secretary)

STATE ADMINISTRATION COMMITTEE

March 8, 1973

The State Administration Committee meeting was called to order this date with Chairman Brand presiding. All members were present.

The following bills were before the committee for consideration:

HB 593...Rep. Marbut, sponsor, explained this bill to the committee. Mr. George Bousliman also explained this bill and proposed to amend HB 593 on page 4, section 2, subsection (4), line 5 through 8 by striking all the material contained therein. Mr. Ted Carkulis and Mr. Doyle Saxby testified as proponents. There were no opponents.

HB 592...Rep. Marbut, sponsor, presented the bill to the committee. Mr. George Bousliman and Mr. Tom Gosh testified as proponents. There were no opponents.

The following actions were taken in executive session:

HB 592...Rep. Hageman moved HB 592 DO PASS. The motion passed unanimously.

HB 593...Rep. Menahan moved HB 593 DO PASS. Rep. Greely made a substitute motion that HB 593 be amended on page 4, section 2, subsection (4), line 5 through 9 by striking all the material contained therein, and as so amended DO PASS. The motion passed unanimously.

HB 598...Rep. Brand moved HB 598 BE HELD FOR ONE YEAR. The motion passed unanimously.

HB 599...Rep. Ulmer moved HB 599 BE HELD FOR ONE YEAR. The motion passed unanimously.

There being no further business, the meeting adjourned.

Joe Brand

JOE BRAND, CHAIRMAN

jb

George Bousliman

4/23 5 P.S.

RECODIFICATION OF THE LAWS OF THE

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

This is an explanation of the proposed recodification of the laws pertaining to the Department of Social and Rehabilitation Services. A recodification is required in order to reflect the changes made by the Executive Reorganization Act of 1971. Briefly stated, the Reorganization Act:

--Created a Department of Social and Rehabilitation Services with a Director as department head;

--Abolished the State Department of Public Welfare and its units, the State Board of Public Welfare and the position of State Administrator of Public Welfare, and transferred their functions to the Department of Social and Rehabilitation Services, except the quasi-judicial functions found in Title 71, Chapters 2 through 7, 13, 14, and 15, R.C.M. 1947, which were transferred to the Board of Social and Rehabilitation Appeals in Section 82A-1907;

--Abolished the Division of Vocational Rehabilitation and transferred its functions to the Department of Social and Rehabilitation Services;

--Abolished the Commission on Aging and transferred its functions to the Department of Social and Rehabilitation Services, except its quasi-judicial functions, found in the State Plan for the Aging, which were transferred to the Board of Social and Rehabilitation Appeals;

--Abolished the Council on Human Resources and transferred its functions to the Department of Social and Rehabilitation Services;

--Transferred the functions of the State Board of Education, pertaining to vocational rehabilitation, found in Title 41, Chapter 8, R.C.M. 1947, to the Department of Social and Rehabilitation Services, except the quasi-judicial functions which were transferred to the Board of

or corrections in such matters as improper references to other section numbers of the Revised Codes are amended.

Altogether, 96 sections are proposed to be amended, two sections added, and 18 sections repealed.

A section-by-section indication of the proposed disposition of each section of the laws of the Department of Institutions is contained in the reference table which follows.

REFERENCE TABLE--RECODIFICATION OF LAWS OF DEPARTMENT OF INSTITUTIONS

The following table shows the disposition in the proposed recodification of every section of the Revised Codes of Montana pertaining to the Department of Institutions. It indicates, in the case of each section, whether it is proposed to be amended, repealed, or not changed (that is, neither amended nor repealed). If the section is proposed to be amended or repealed, it also indicates the reason for the amendment or repeal. Some sections are also proposed to be renumbered--placed in more appropriate chapters or in a different order in the same chapter. When this is proposed, it is indicated in parentheses following the word "amended".

Section	Change	Reason
10-601	No change	
10-611	Amended	Agency name changes, style changes
10-612	Amended	Agency name changes, style changes. This section also requires institution name changes because of a 1967 law changing the names of all state institutions.
10-613	No change	
10-1101 through 10-1111	No changes	
16-3410	No change	
38-106.1	Added	This definition section was added in order to avoid unnecessary repitition, in the various sections, of the full name of the Department of Institutions and Warm Springs State Hospital.
38-107	Amended	Agency name change
38-108 (1)	Repealed	The provisions of this section are covered in the next section, section 38-108.2, thus it is superfluous.
38-108 (2)	Amended	Agency name change, style changes. The section was renumbered to this proper numbering style, i.e., 38-108.2, not 38-108 (2).
38-109	Amended	Institution name change, style changes
38-110	Amended	Institution name change, style changes
38-112	No change	
38-113	No change	
38-114	No change	
38-115	No change	
38-116	No change	
38-117	Repealed	This section provides that insane persons must be received and returned to the state prison. This is true without having to state it in the law. This provision is adequately covered in the Code of Criminal Procedure, Title 95.

Section	Change	Reason
38-119	Repealed	This section, which provides that only indigent persons may be received in the state hospital unless otherwise provided for, is covered by Section 80-1803.
38-120	Amended	Institution name change, style changes
38-201	No change	
38-202	No change	
38-203	No change	
38-204	No change	
38-205	No change	
38-206	No change	
38-207	Amended	Institution name change, style changes
38-208	Amended	Institution name changes, style changes
38-208.1	Amended	Institution name changes, style changes
38-208.2	Amended	Institution name changes, style changes
38-208.3	Amended	Style changes and superfluous language removed. The reference to "this act" was changed to a specific section so it would be clear where the provisions of this section apply.
38-209	Amended	Institution name changes, style changes
38-210	Amended	Institution name changes, style changes
38-211	No change	
38-212	No change	
38-213	Amended	Agency name change, style changes. It should be noted that the name of the Department of Institutions was completely written out, even though department was defined in the first section of this title. This was done because it is the first reference to "department" in this chapter. (The name of the department is completely written out in the first reference to it in a chapter so that a reader will not have to refer to the definition section in chapter 1 of the title to determine what department the reference refers to.)

Section	Change	Reason
38-301	Amended	Institution name changes, style changes
38-302	Amended	Institution name changes, style changes
38-303	Amended	Institution name change, style changes
38-401	Amended	Institution name changes, style changes
38-402	Amended	Institution name changes, style changes
38-403	Amended	Institution name change, style changes
38-404	Amended	Institution name changes, style changes
38-405	Amended	Institution name change, style changes
38-406.1	Repealed	This definition section only applies to the next section, section 38-406.2. Thus, the appropriate language from this section can be placed in section 38-406.2, and this section can be eliminated. Definition sections should only be used to avoid unnecessary repetition of words in several sections, not in just a few sections or, as in this instance one section.
38-406.2	Amended (Renumbered 38-408.1)	(See section 38-406.1 for an explanation of changes in this section.) This section was renumbered so it will appear at the end of this chapter. It relates to voluntary admissions, unlike the other sections in this chapter which relate to involuntary commitments.
38-407	Amended	Institution name change, style changes
38-408	Amended	A reference to a previously repealed section was deleted. Several style changes were made.
38-501	No change	
38-502	Amended	Agency and institution name change. The full names of the "department" and the "state hospital" were used. (See section 38-213 for an explanation of why this was done.)
38-503	Amended	Institution name change, style changes
38-504	Amended	Agency and institution name changes, style changes
38-505	Amended	Agency and institution name changes, style changes

Section	Change	Reason
38-306	Amended	Institution name changes, style changes
38-307	Amended	Institution name change, style changes
69-6401	No change	
69-6402	Repealed	This section, providing for a Board of Eugenics and establishing qualifications for members of that board, is proposed to be repealed and the provisions of this section moved to the Executive Reorganization Act, Title 82A. (The creation of all state agencies along with qualifications of agency members will be placed in Title 82A. Therefore, one title in the Code will contain the history of all state agencies, thus providing a convenient reference to the structure of the executive branch of state government. The functions of each agency will remain in the present location in the Codes.) Also, the last paragraph in this section was superseded by 82A-112 (1)(e).
69-6403	Amended	The Board of Eugenics was transferred to the Department of Institutions for administrative purposes only. Therefore, the Department assumes the administrative functions (specified in 82A-108) of the Board, and that change is now reflected in this section. Various style changes were also made.
69-6404	Amended	Since the Board of Eugenics was transferred to the Department of Institutions for administrative purposes only, the Department assumes, under section 82A-108, the administrative functions in this section. Various style changes were also made.
69-6405	Amended	This section was amended to correct an apparent error in line 8 of this section as it appears in the Codes. Various style changes were also made.
69-6406	Amended	Since the Board of Eugenics was transferred to the Department of Institutions for administrative purposes only, the Department assumes, under section 82A-108, the administrative functions in this section. Various style changes were also made.

Section	Change	Reason
80-1401	Amended	This section has been rewritten as it applies to the new Department of Institutions. It seems that this statement of purpose should be used to guide the new Department in carrying out the functions of the abolished State Department of Institutions.
80-1402	Amended	This definition section was amended to define the new agencies and positions created by the Executive Reorganization Act, and to apply these definitions to all of Title 80.
80-1403	Amended	Agency name change, style changes, and superfluous language removed.
80-1404	Repealed	This section provides for the Director of the abolished State Department of Institutions, thus the section is obsolete.
80-1405	Amended	This section provides for certain functions which were transferred to the new Department. Several of these functions, such as adopting rules, budgeting, appointing personnel, etc., are covered in section 82A-107, and thus are superfluous and were deleted in this section.
80-1406	Amended	The deleted parts of this section are superfluous or obsolete. Under section 82A-107, the Director of the Department controls the employment of personnel. Section 82A-110 now provides for the appointment of advisory councils. The last sentence in the section creates the Council of Superintendents. This council was abolished by section 82A-807 (2).
80-1407	Repealed	The provisions of this section are now in section 82A-806. (See section 69-6402 for an explanation of the reason for this action.)
80-1407.1	Added	This section was added in order to specify exactly what the functions of the Board of Institutions are. Subsections (1)(a) and (2) were taken from the Executive Reorganization Act. Subsection 1(b) was added to give guidelines for the board in hearing disputes, and is a substantive change.

Section	Change	Reason
80-1408	Repealed	The provisions of this section have been superseded by section 82A-112. The Governor now designates the chairman of the Board under section 82A-112 (1) (c). The expenses of Board members are now covered under section 82A-112 (1)(c). The reference to Director in the last sentence refers to the Director of the former State Department of Institutions, thus the sentence is obsolete.
80-1409	Repealed	This section, which provides that the Board of Institutions manage the Department of Institutions, is repealed because the Board no longer manages the Department. The functions of the Board have been greatly reduced, therefore, the meeting requirements should not be specifically stated in the law. The meeting dates can be set by Board rules. This is a substantive change. The quorum requirement is now stipulated in section 82A-112 (1) (f).
80-1410	Amended	Agency name change, style changes, and clarified the language in the second part of the section
80-1411	Amended	Style changes and superfluous language removed
80-1412	Amended	Agency name change
80-1413	Amended	Agency name change, style changes
80-1414	Amended	Agency name change, style changes. The reference to the Aftercare Division is removed because all units, including this division, of the State Department of Institutions were abolished.
80-1415	Amended	This section was clarified to explain what control over a child it refers to, i.e., the control under section 80-1414.
80-1416	Amended	Agency name changes by deleting reference to division, style changes
80-1417	No change	
80-1418	No change	

Section	Change	Reason
80-1501	Amended	Agency name change. The reference in subsection (7) to the Registrar of Motor Vehicles should technically be changed to the Department of Law Enforcement and Public Safety. Such a change would expand the intent of the original provision beyond the manufacture of license plates and similar articles. Inserting the term "related" in the sentence will keep the section within its original intent and purpose.
80-1502	No change	
80-1503	No change	
80-1601	Amended	Deleted reference to the abolished Aftercare Division
80-1602	No change	
80-1603	Amended	Deleted references to the Director of the abolished State Department of Institutions. Style changes
80-1604	No change	
80-1701	No change	
80-1702	No change	
80-1703	No change	
80-1704	No change	
80-1801	No change	
80-1802	No change	
80-1803	No change	
80-1804	No change	
80-1901	No change	
80-1902	No change	
80-1903	No change	
80-1904	No change	
80-1905	No change	

Section	Change	Reason
80-1906	No change	
80-1907	No change	
80-1908	No change	
80-1909	Amended	Agency name change, style changes
80-1910	No change	
80-1911	No change	
80-2101	No change	
80-2102	No change	
80-2103	No change	
80-2104	No change	
80-2105	Amended	Institution name changes, style changes
80-2106	Amended	Institution name changes. Deleted references to the Director of the abolished State Department of Institutions.
80-2107	No change	
80-2202	No change	
80-2203	No change	
80-2204	No change	
80-2205	No change	
80-2206	No change	
80-2207	Repealed	This section, which provides for financing the construction of the physical education building at the Pine Hills school, is obsolete because the building has been built and paid for.
80-2209	No change	
80-2210	No change	
80-2211	No change	
80-2212	No change	
80-2213	Amended	Institution name changes, style changes

Section	Change	Reason
80-2303	No change	
80-2304	No change	
80-2305	No change	
80-2306	No change	
80-2307	No change	
80-2308	No change	
80-2309	No change	
80-2310	Amended	Institution name changes. The section was rewritten to explain what the Pastmont Training School does, not that it is to be built, because the Training Center is now constructed and established.
80-2311	Repealed	This section, limiting the size of the Training Center to 200 bed units, is now obsolete because the Center has been constructed.
80-2312	Amended	Agency name changes. The Training Center has been built, therefore, the section is rewritten to explain the functions of the Center, and not to provide for its construction.
80-2401	Amended	Removed reference to Division of Mental Hygiene because the Division was abolished when the former State Department of Institutions was abolished.
80-2401.1	Amended	Removed reference to the abolished Division of Mental Hygiene. Style changes
80-2402	Amended	Removed reference to the abolished Division of Mental Hygiene
80-2403	Amended	Removed reference to the abolished Division of Mental Hygiene. Style changes.
80-2404	No change	
80-2405	Amended	Removed the reference to the abolished Division of Mental Hygiene. Style changes.
80-2406	Amended	Removed references to the abolished Division of Mental Hygiene. Style changes.

Section	Change	Reason
80-2407	Amended	Removed references to [illegible] abolished Division of Mental Hygiene. Style changes
80-2408	No change	
80-2409	Amended	Removed reference to the abolished Division of Mental Hygiene. Style changes
80-2410	Amended	The Mental Health centers referred to in this section have been built, and the section was rewritten to reflect this fact. Style changes were also made.
80-2411	Amended	The reference to "established" has been removed, because the centers are now established. A correction to an internal reference to a section number was also made.
80-2412	No change	
80-2501	Amended	Institution name change. This is the first reference to the Warm Springs State Hospital in this section, therefore, the full name of the State Hospital is written out.
80-2502	Amended	Institution name changes, style changes
80-2503	No change	
80-2601	Repealed	This section established the Division of Mental Retardation. Under Section 82A-802, this unit of the abolished State Department of Institutions was abolished along with that department.
80-2602	Repealed	This section provides that the Boulder River School and Hospital and the Eastmont Training Center be placed in the Division of Mental Retardation. These institutions are now in the new Department of Institutions. The Division of Mental Retardation was abolished under section 82A-802.
80-2603	Repealed	This section provides that the Superintendent of the Boulder River School and Hospital be the Supervisor of the Division of Mental Retardation. That Division was abolished under Section 82A-802, therefore, the section is obsolete.
80-2604	Amended	Removed reference to the abolished Division of Mental Retardation. Style changes

Section	Change	Reason
80-2405	No change	
80-2406	Amended	Removed reference to the abolished Division of Mental Retardation. Style changes
80-2407	No change	
80-2408	Amended	Removed the reference to the Director of the abolished State Department of Institutions. That position was abolished with the establishment of the Department. Several style changes were made.
80-2609	Amended	Removed reference to the Director of the abolished State Department of Institutions. Style changes
80-2610	Amended	The reference to the Director of the abolished State Department of Institutions was retained so that the new Director of Institutions will have the rule making functions under this section. This is a minor substantive change, but the spirit of the section requires that the head of the new Department of Institutions should make the rules contemplated under this section.
82-903	Repealed	This section, which provides that the Secretary of State, Attorney General, and State Auditor constitute a Board of Pardons, is obsolete. A new Board of Pardons was established in 1955 under section 94-9822, thus this section can be repealed.
82A-801	No change	
82A-801.1	Added	A section of this type will be added to the laws of each department created in the Executive Reorganization Act (Title 82A). The purpose of this section is to catalog in one section the primary laws the Department administers. This approach was used in the recodification of the Health laws in 1967.
82A-802	Repealed	All agency abolishment and transfer sections in the Executive Reorganization Act are being repealed, as the transfer will already have taken place by 1973, and these sections will then be obsolete.

Section	Change	Reason
82A-803	Repealed	This section refers certain functions of the Board of Institutions to the Department of Institutions. These transfers will have taken place by the time the 1973 Legislature meets, thus it is obsolete and can be repealed.
82A-804	Amended	This section was re-written in order to reflect the current status of the Board of Pardons. The renaming of the Director of Probation and Parole has now been reflected in the sections where references are made to that position in Title 98, Chapter 94.
82A-805	Amended	This section continued the Board of Eugenics, which was originally created in section 69-6402. The creation of all agencies and the composition and qualifications of Board members will be placed in the Executive Reorganization Act, Title 82A, so that a quick determination can be made of all agencies from one area in the Revised Code. In this section the composition and qualifications of Board members were taken from section 69-6402.
82A-806	Amended	See section 82A-805 for the reasons for the amendment of this section. The composition and qualifications of Board members were taken from section 80-1407. The functions of this Board stated in the former paragraphs (3) and (4) of this section are now found in the new section 80-1407.1.
82A-807	Repealed	This section abolishes several agencies, and since its function is now complete, it is obsolete.
91-105	No change	
91-106	No change	
94-4720	No change	
94-9821	No change	
94-9822	Amended (Renumbered 94-9823.1)	This section created the Board of Pardons. The composition of the Board was moved to Section 82A-804. The Board was designated as a quasi-judicial board, therefore, the references to the expenses of Board members is obsolete along with references to terms of office and removal of Board members.

Section	Change	Reason
94-9822 (continued)		A new section will be added to the Reorganization Act to provide for [illegible] on all boards. The section is renumbered in order to place it in the appropriate part of Chapter 98, after the definition section.
94-9823	Amended	The definition for the Board of Pardons was added to this definition section. Style changes were also made.
94-9824	Amended	This section was amended in order to stipulate that the Department of Institutions will handle the administrative functions of the Board. The reference to the adoption of an official seal was deleted. Seals are now obsolete and archaic, and have no legal function. The Board can always adopt and use a seal if it cares to. The last sentence in this section is true without having to repeat it in the various laws for each agency of state government.
94-9825	Amended	References to the salaries of the Administrator of Probation and Parole, and the employees of the Board of Pardons were deleted. This is a budget function and should not have to be repeated in the law.
~~94-9826~~	Repealed	The Board of Pardons was designated a quasi-judicial board; therefore, the Board members receive actual and necessary expenses as provided in section 82A-112 (1)(e). Thus, this section has been superseded and is obsolete.
94-9827	No change	
94-9828	Amended	This section was rewritten in a tabulated form in order to make it easier to read and to ascertain the various functions of the Administrator of Probation and Parole. The name change from "director" to "administrator" was required.
94-9829	No change	
94-9830	No change	
94-9831	No change	
94-9832	Amended	A correction to internal references to a section number was required. Several style changes were made.

Section	Change	Reason
94-9833	Amended	A correction to an internal reference to a section number was required. Style changes
94-9834	No change	
94-9835	No change	
94-9836	No change	
94-9837	No change	
94-9838	No change	
94-9840	No change	
94-9841	No change	
94-9842	No change	
94-9843	No change	
94-9844	No change	
94-9845	No change	
94-9846	No change	
94-9847	No change	
94-9848	No change	
94-9849	No change	
94-9850	No change	
94-9851	Repealed	This section provides that the probation and parole law passed in 1955 applies to all persons on probation or parole or eligible for probation and parole at the time of its passage. It also provides that any rights and earned good time should not be disallowed because of the passage of the 1955 act. The section was passed 18 years ago and time has made it obsolete, thus it can be repealed.
94-501-23	Amended	There is a reference in this section to "parole board," but this reference obviously means Board of Pardons, and the reference has been corrected. Several style changes were made in this section.

Section	Change	Reasons
95-505	Amended	Institution name change, style ch-
95-506	Amended	Institution name changes, styl- -nges
95-507	Amended	Institution name changes, style changes
95-508	Amended	Institution name changes, style changes
95-2206	No change	
95-2210	No change	
95-2217	No change	
95-2218	Amended	The Board of Pardons no longer appoints the Warden of the State Prison, therefore, the reference to that function of the Board was deleted. Several style changes were also made.
95-2219	No change	
95-2220	No change	
95-2221	No change	
95-2222	No change	
95-2223	No change	
95-2224	No change	
95-2225	No change	
95-2226	Amended	Agency name change. This section was extensively revised because it was so poorly drafted. This is an example of legal drafting at its worst.
95-2305	Amended	Institution name changes, style changes
95-2311	Amended	A correction in the reference to the Board of Pardons was required, and style changes were made.
95-2312	No change	

dures for canceling and writing off accounts receivable carried on the books of the various state agencies and which have been assigned to the department of revenue pursuant to section 84-7104, which are uncollectible or the continued pursuance of the collection thereof would cost the state more than the amount collected. Such procedures shall be established in accordance with section 82-110.

Section 8. There is a new section to be numbered 84-7108, R.C.M. 1947, which reads as follows:

84-7108. **Circumstances under which previously written off debt may be collected.** If a debt previously written off under section 84-7107 subsequently becomes collectible, the department shall proceed to collect the money due pursuant to sections 84-7105 and 84-7106.

Section 9. There is a new section to be numbered 84-7109, R.C.M. 1947, which reads as follows:

84-7109. **Debts not collectible under this act.** This act does not apply to unliquidated debts and to debts owed to a state agency for which a procedure for compromise, release, discharge, waiver, cancellation or other form of settlement thereof for reasons other than uncollectibility is by law made specifically applicable to such state agency.

Section 10. There is a new section to be numbered 84-7110, R.C.M. 1947, which reads as follows:

84-7110. **State agencies to adopt rules to conform to act.** All state agencies shall adopt rules, regulations and forms to participate in and carry out the provisions of this act.

Section 11. There is a new section to be numbered 84-7111, R.C.M. 1947, which reads as follows:

84-7111. **Right of hearing to aggrieved persons.** Any person aggrieved from a decision or an action taken under this act shall have the right to present his grievances in the same manner as provided by law for taxpayer appeals.

Approved March 11, 1974

CHAPTER NO. 119

AN ACT TO REPEAL THE AUTHORITY GRANTED TO CITY COUNCILS TO LEVY A POLL TAX, REPEALING SECTION 11-951 , R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-951, R.C.M. 1947, is repealed.

Approved March 11, 1974

CHAPTER NO. 120

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF

THE LAWS RELATING TO THE DEPARTMENT OF INSTITUTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-611, R.C.M. 1947, is amended to read as follows:

"10-611. **Hearing — judgment.** *(1)* The court may conduct the hearing in an informal manner and may adjourn the hearing from time to time. In the hearing of any juvenile case, as distinguished from a case involving a child charged with the commission of or attempt to commit any of the criminal offenses set out in subdivision (2) (b) of section 10-602, the general public shall be excluded and only such persons admitted as have a direct interest in the case. *However, when* the hearing in the juvenile court is had on a written petition charging the commission of any felony, persons having a legitimate interest in the proceeding, including responsible representatives of public information media, shall not be excluded from *the* hearing. All cases involving children shall be heard separately and apart from the trial of cases against adults.

(2) If the court *finds* that the child is delinquent within the provisions of this act, it may, by order duly entered, proceed as follows:

(a) Place the child on probation or under supervision upon such terms as the court *determines;*

(b) Commit the child to a suitable public institution or agency, except youth forest camps; or commit the child to the department of institutions or to a suitable private institution or agency incorporated under the laws of the state, approved by the department of *social and rehabilitation services,* and authorized to care for children; or place them in suitable foster homes, approved by the department of *social and rehabilitation services,* or the probation department;

(c) In the case of *a* child of the age of sixteen (16) years or older, who the court feels would be a suitable person for placement at a youth forest camp, the court should notify the department of institutions of such finding and the department of institutions should designate to the court the juvenile facility to which the child should be delivered for evaluation. The court may then commit *the* child to the department of institutions for not to exceed thirty (30) days for the purpose of evaluation as to *the* child's suitability for such placement, and order the child delivered for evaluation to the juvenile facility designated by the *department of institutions.* If after *the* evaluation, the department of institutions reports to the court that *the* child is suitable for placement in a youth forest camp, and if there is space available at *the* camp, the court may commit *the* child directly to the youth forest camp under the terms and conditions of the commitment provided for in this act. If, however, the department of institutions reports to the court that *the* child is not suitable for placement in *the* camp, stating the reasons therefor, he shall be returned to the court for such further disposition as the court *considers* advisable under the provisions of this act. The costs of transporting *the* child to the designated juvenile facility for evaluation and the cost of returning *the* child to the court, should that become necessary, shall be borne by the county of *the* child's residence.

(d) Order such further care and treatment as the court *considers* best for the child, except as herein otherwise provided.

(3) No commitment of any delinquent child to any institution under this act shall be *considered* commitment to a penal institution. No adjudication upon the status of any delinquent child in the jurisdiction of the court shall operate to impose any of the civil disabilities ordinarily imposed by conviction, nor shall any delinquent child be *considered* a criminal by reason of such adjudication, nor shall such adjudication be *considered* a conviction, nor shall any child be charged with or convicted of any crime in any court except as provided in the preceding section of this act. The disposition of the delinquent child or any evidence given in the court *is* not admissible as evidence against the child in any other case or proceeding.

(4) When the court *commits* a delinquent child to any institution or agency, it shall transmit with the order of commitment a summary of its information concerning *the* child.

(5) When a child or an adult under the age of twenty-one (21) years is convicted of a felony or felonies or attempt to commit a felony or felonies and is sentenced to imprisonment in the state prison, he shall, throughout the term of imprisonment or until such time as he reaches the age of twenty-one (21) years, have sleeping quarters separate and apart from inmates who are over the age of twenty-one (21) years, and additionally shall be kept separate and apart at other times in those areas where staff and facilities will permit."

Section 2. Section 10-612, R.C.M. 1947, is amended to read as follows:

"10-612. **Form of commitment to state juvenile facility.** *When* under the provisions of this act the court orders a delinquent child committed *to* the *Mountain View* school, *Pine Hills* school, or other juvenile facility *of the department of institutions,* the form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana, County of ....., ss:

In the district court for the.....judicial district.

On the.....day of ...., 19...., ...a minor of this county, ...years of age, was brought before me charged with..... Upon due proof I find that .....is a suitable person to be committed to.....

It is ordered that.....be committed to..... until..... attains the age of 21 or is sooner legally discharged or placed out.

The names, addresses and occupations of the parents are:

Name Address Occupation

.....

.....

The names and addresses of other near relatives are:

.....

.....

Witness my hand this ..... day of ..... A.D. 19...

..... Judge."

Section 3. There is a new section numbered 38-106.1, R.C.M. 1947, which reads as follows:

38-106.1. Unless the context requires otherwise, in title 38: (1) "Department" means the department of institutions provided for in title 82A, chapter 10.

(2) "State hospital" means the Warm Springs state hospital.

Section 4. Section 38-107, R.C.M. 1947, is amended to read as follows:

"38-107. **Department may send patient to friends.** The department may, at the expense of the state, when satisfied it will be for the best interest of any insane person, send him to friends outside of the state."

Section 5. Section 38-108(2), R.C.M. 1947, is amended to read as follows:

"38-108(2). **May contract with some other institution.** The department may, when satisfied it will be for the best interest of any insane person in the state, send him to some other institution, with its consent, outside the state. *The* expense of sending and supporting him at such *an* institution must be paid by the state, *if the* person is indigent."

Section 6. Section 38-109, R.C.M. 1947, is amended to read as follows:

"38-109. **Discharge of patients.** The department must *discharge* from the state hospital *a* patient, upon the written report of the hospital medical staff that *the* patient is in satisfactory mental condition to be discharged. *The* written report must be filed and kept in the office of the department, and every inmate on recovery must be ordered released, without requiring a sponsor."

Section 7. Section 38-110, R.C.M. 1947, is amended to read as follows:

"38-110. **Maintenance of indigent persons on discharge.** Upon the discharge of *a* patient *from* the state hospital, the department shall notify the board of public welfare of the county from which *the* patient was committed. *The* county board of public welfare shall at once ascertain whether the discharged patient is in financial need. *If the* patient is found to be in financial need, the county board of public welfare shall properly care for and maintain the discharged patient under the Public Welfare Act until *the* patient is able to care for himself, or *until another* provision has been made for care *of the patient."*

Section 8. Section 38-120, R.C.M. 1947, is amended to read as follows:

"38-120. **Receipt of nonresident insane pending return to home state.** An insane person, *who is not a resident* of this state, may be received into the state hospital for a period not to exceed thirty (30) days pending return to the state of his residence."

Section 9. Section 38-207, R.C.M. 1947, is amended to read as follows:

"38-207. **Forms of certificates.** The certificate must be made in the form prescribed by, and if *available, on* blanks furnished by the department of institutions."

Section 10. Section 38-208, R.C.M. 1947, is amended to read as follows:

"38-208. **Commitment.** *After the* examination *is completed* and *the* certificate *is filled out, if the judge* believes the person so far disordered in his mind as to endanger health, person, or property, *then he* must *issue* an order that the *person* be confined in *Warm Springs* state hospital. *A* copy of *the* order must be filed and recorded by the clerk of the district court of the county. The clerk must also keep in convenient form an index book, showing the name, age, and sex of each person so ordered to be confined in the state hospital, with the date of the order and the name of the insane asylum in which the person is ordered to be confined. No fees must be charged by the clerk for performing any of the duties provided for by this section or in this chapter."

Section 11. Section 38-208.1, R.C.M. 1947, is amended to read as follows:

"38-208.1. **Admission of patients prior to legal commitment — when authorized.** *The* superintendent of the state hospital *may* admit *a patient* who *has* not been legally committed to the *state* hospital, when a patient is presented for admission accompanied by a certificate from the county physician in the county in which the patient resides. *The certificate shall state* that to the best of his knowledge this patient is suffering from acute mania or circular insanity and requires immediate hospitalization, and who, by reason of the absence of the district judge from the county of the *patient's residence, has* not been legally committed to the state hospital."

Section 12. Section 38-208.2, R.C.M. 1947, is amended to read as follows:

"38-208.2. **Legal commitment within five days after emergency admission.** Within five (5) days after the admission to the state hospital of *a patient* who *has* not been legally committed as provided *for in section 38-208.1,* the superintendent of *the state* hospital shall *either* have *the patient* legally committed thereto by the district court of the third judicial district of the state of Montana in and for the county of Deer Lodge, or shall release and discharge *the patient* from *the state* hospital. *If* the district judge *is absent,* or if a jury trial is being held by *the* district judge, and prevents the handling of *the commitment,* the patient shall be legally committed as soon after the return of the district judge as possible, or as soon as the district judge is available to attend to *the* admission."

Section 13. Section 38-208.3, R.C.M. 1947, is amended to read as follows:

"38-208.3. **Cost of commitment proceedings.** In all cases provided for by *section 38-208.1* the costs of commitment proceedings shall be paid by the county of the *patient's residence. After* the order of commitment *is* signed by the district judge, *the* order and all other papers relative to the commitment of *the* person shall be forwarded by the clerk of the district court in and for the county of Deer Lodge, to the clerk of the district court of the county of the *patient's residence,* or of the county from which the patient has been sent to the state hospital, and shall be placed on

record and filed in that office. *The order and papers* shall not be placed on record and filed in the office of the clerk of the district court of Deer Lodge county, unless the patient is a resident of, or has been sent from Deer Lodge county."

Section 14. Section 38-209, R.C.M. 1947, is amended to read as follows:

"38-209. **Delivery of insane person at state hospital.** The insane person, together with the order of the judge, and the certificate of the physicians must be delivered to the sheriff of the county in which *the* order is made, or to a responsible relative or friend, as determined by the judge who signs *the* order, and by him must be delivered to the *superintendent* of the state hospital. The superintendent of the state hospital may refuse to receive any person upon any order, if the papers presented do not comply with the provisions of this chapter."

Section 15. Section 38-210, R.C.M. 1947, is amended to read as follows:

"38-210. **Moneys of insane person — disposal of.** When *a* person is adjudged insane and ordered committed to the state hospital, or is adjudged to be in such a condition of mind that he should be placed in *the state* hospital for observation, *the money* found on him at the time he is taken into custody must be certified to by the judge, and sent with *the* person to the *state* hospital. *The money must* be delivered to the superintendent *of the state hospital,* whose receipt *for the money* shall be taken by the officer or other person delivering him to the hospital, who must file *the* receipt with the clerk of the district court of the county in which the proceedings were *held.* If the amount exceeds one hundred dollars *($100),* the excess must be applied to the payment of the expenses of *the* person while in the hospital. If the amount is one hundred dollars *($100)* or less it must be kept and delivered to the person when discharged or released from the hospital or applied in payment of funeral expenses if *the* person dies while in *the* hospital. If *an* amount *remains* to the credit of *a* person paroled, discharged, or released, or after payment of the funeral expenses of *the* person who dies while in *the* hospital, *and the amount remains* unclaimed for one (1) year after *the* parole, discharge, release, or death, fifty per *cent* (50%) of *the* amount, but not in any event exceeding fifty dollars *($50)* shall be withdrawn from *the* account and placed in the agency fund in the state treasury, to be expended for indigent patients at *the* times and in *the* manner and for such purposes as may be prescribed by the superintendent of *the* hospital. *A* balance *which remains* to the credit of *the* person, shall be transmitted to the county treasurer of the county from which *the* person was sent, and if *a* sum remains after paying the costs of hearing, and transportation to the hospital, the balance shall be paid into the state treasury to the credit of the general fund."

Section 16. Section 38-213, R.C.M. 1947, is amended to read as follows:

"38-213. **Dissatisfied persons — procedure on question of insanity.** (1) If a person ordered to be committed, or any friend in his behalf,

is dissatisfied with the order of the judge committing him, he may, within five days after the making of *the* order, demand that the question of his sanity be tried by a jury before the district court of the county in which he was committed. *That* court must *have* a jury summoned and in attendance at a date stated, not less than five nor more than ten days from the date of the demand for a jury trial.

(2) At *the* trial the cause against the alleged insane must be *presented* by the county attorney of the county, and the trial must be had as provided by law for the trial of civil causes before a jury, and the alleged insane person must be discharged unless a verdict that he is insane is found by at least three-fourths of the jury.

(3) If the verdict of the jury is that he is insane, the judge must adjudge that fact and make an order of commitment as upon the original hearing. *The* order must be presented, at the time of commitment of *the* insane person, to the superintendent of the hospital to which the insane person is committed, and a copy *of the order must* be forwarded by *the* superintendent to the *department of institutions* and filed in its office.

(4) Proceedings under the order must not be stayed, pending the proceedings for determining the question of sanity by a jury, except upon the order of a district judge, with provision made *in the order* for *the* temporary care and custody of the alleged insane person as may be *considered* necessary. If the district judge, by the order granting the stay, commits the accused insane to the custody of any person other than a peace officer, he may, by *the* order, require a bond for his appearance at the trial. If a judge refuses to grant an application for an order of commitment of an insane person alleged to be dangerous to himself and others, if at large, he must state his reasons for refusal, and any person aggrieved *by his refusal* may demand a trial of the question of the insanity of *the* accused insane, in the manner provided *in this section* for a jury trial when demanded by or on behalf of the accused insane.

(5) If the person sought to be committed is not a poor or indigent person, the costs of the proceedings are a charge upon his estate, or must be paid by persons legally liable for his maintenance, unless otherwise ordered by the judge. If the alleged insane person is adjudged not to be insane, the judge may, in his discretion, charge the costs of the proceedings to the person making the application for an order of commitment, and judgment may be entered against him for the amount thereof and enforced by execution."

Section 17. Section 38-301, R.C.M. 1947, is amended to read as follows:

"38-301. **Transfer of patients to Boulder river school and hospital.** (1) When *a* person *is* committed to the state hospital as an insane person, and the superintendent and physicians of *the state* hospital determine from examination, tests, and observation *that the* person is not a proper person to be confined in *the state* hospital but should properly be placed in the *Boulder river* school *and hospital*, the superintendent of the state hospital shall ascertain from the superintendent of the *Boulder river* school, whether or not there is room and accommodations for *the* person at *that* school.

(2) If there is room and accommodations for *the* person at *the Boulder river* school, the superintendent of the state hospital shall make a certificate in triplicate, which shall give the name of the person to be transferred, the county from which committed to *the state* hospital, *the* date of commitment and date received at *the* state hospital, and state as fully as possible therein the reasons why *the* person should be transferred from the state hospital to the *Boulder river* school. *All* three copies of *the* certificate shall be signed by the superintendent and all physicians of the hospital who have examined and observed *the* person while in *the state* hospital. One copy of *the* certificate shall be retained in the files of the *state* hospital, and one copy shall be transmitted to the clerk of the district court of the county from which *the* person was committed to the state hospital.

(3) The clerk of *the* district court, upon receiving *a* copy of *the* certificate, shall immediately give written notice to the relatives or guardian whose names are shown in the proceedings for the commitment of *the* person to the state hospital, or *which are* disclosed by any guardianship proceedings with regard to *the* person in *the* court, stating briefly the contents of *the* certificate and purpose thereof.

(4) Any such relative or guardian may make and file with the clerk of court, within ten (10) days after the date of notice, written protest or objection to the proposed transfer. If *a* written protest or objection is filed within *the ten (10) days*, the clerk of the court shall notify the district judge thereof, and *the* judge shall fix *a* time and place for the hearing of *the* protest and objection in open court, as will give reasonable opportunity for the production and examination of witnesses. If no protest or objection is filed, or if a protest or objection is filed and a hearing *held* thereon, *and the judge approves the transfer*, the judge shall make an order approving *the* transfer, *and* the transfer may be made. *However*, if *a* protest or objection is filed, and after a hearing thereon, the judge makes an order disapproving *the* transfer, the transfer shall not be made.

(5) The clerk of the court shall, if no protest or objection is filed within the time provided, transmit a written notice, in duplicate, to the superintendent of the state hospital that no protest or objection has been filed. *If* a protest or objection has been filed and a hearing had thereon *the* clerk shall immediately, after the making of any order approving or disapproving *the* transfer, make a certified copy of *the* order, in duplicate, and transmit both *copies* to the superintendent of *the state* hospital.

(6) Upon receiving *a* written *notice* that no protest or objection has been filed, or upon receiving certified copies of an order approving *the* transfer, one of *the* notices or *a* certified copy of *the* order shall be placed in the files of the state hospital, and the superintendent of *the state* hospital may then have an attendant of the *state* hospital take *the* person and deliver him to the superintendent of *the Boulder river* school, together with a copy of *the* certificate *and* a copy of *the* notice or *a* certified copy of *the* order attached thereto, to the superintendent of *the Boulder river* school. *The certificate is the superintendent's* authority for receiving and keeping *the* person, and *takes* the place of any commitment thereto. The cost of transporting *the* person from the *state* hospital to the *Boulder river* school shall be paid out of funds appropriated for the maintenance of the state hospital."

Section 18. Section 38-302, R.C.M. 1947, is amended to read as follows:

"38-302. **Admission of certain inmates at Warm Springs state hospital to Boulder river school and hospital.** If *an* inmate of the state hospital is not so far disordered in mind as to endanger health, person, or property but by reason of being feeble-minded is a proper person for admission to the *Boulder river school and hospital, the* person may be admitted to *that* school by proceedings in the district court of the county in which *the* state hospital is located. *The* proceedings *shall* be in compliance with the laws relating to the admission to *the Boulder river* school."

Section 19. Section 38-303, R.C.M. 1947, is amended to read as follows:

"38-303. **Expenses of examination and transportation.** The expenses of examination and transportation of *the* person shall be paid by the state hospital."

Section 20. Section 38-401, R.C.M. 1947, is amended to read as follows:

"38-401. **Examination of person mentally deranged but not dangerous — physician's certificate.** *(1)* When an affidavit has been made, warrant issued, hearing had thereon and examination made of the person named in *the* affidavit and warrant, in accordance with sections 38-201 to 38-205, inclusive, the physicians attending *the* hearing and making *the* examination, if they conclude that there is reason to believe that *the* person is disordered in his mind to some extent, but not to such an extent as to endanger health, person, or property, must make a certificate on a form prescribed by the superintendent of *Warm Springs* state hospital, showing as near as possible:

(a) That while they do not believe *the* person to be disordered in his mind to *an* extent as to endanger health, person, or property, they do believe that *the* person may be disordered in his mind to such an extent that he should be admitted to *Warm Springs* state hospital for further examination and observation.

(b) The premonitory symptoms, apparent cause of *the* disordered mind, and the extent and duration thereof.

(c) The nativity, age, residence, occupation, and previous habits of *the* person.

(d) The place *where* he came *from*, and the length of time he has resided in this state.

(e) The names of the nearest relatives, if known, and the name of *the* guardian of *the* person, if there *is* one, with their names and post-office addresses.

(2) The certificate must be filed in the office of the clerk of the district court of the county in which *the* hearing is held."

Section 21. Section 38-402, R.C.M. 1947, is amended to read as follows:

"38-402. **Judge's order — observation and examination.** If the physicians' certificate provided for in section 38-401 is made and filed, the judge shall make an order directing that a person named *in the certificate* be placed in the state hospital for such time as he *considers* necessary, but which shall not be less than two (2) nor more than four (4) weeks, for observation and for further examination for the purpose of determining whether he is disordered in his mind, and if so, whether or not his mind is disordered to such an extent as to require *commitment* to *the state* hospital. *The* order shall designate the person to take him to *the* hospital. Certified copies of the physicians' certificate and of *the* order shall be given the person designated in *the* order, and the person so designated shall deliver *the* person to the state hospital and shall at the same time deliver to the superintendent thereof *the* certified copies of *the* physicians' certificate and order, and *that* shall be the authority of *the* superintendent for receiving, keeping, and detaining *the* person in *the state* hospital for the time specified in *the* order."

Section 22. Section 38-403, R.C.M. 1947, is amended to read as follows:

"38-403. **Supplemental order when more time for observation necessary.** When *a* person is received at the state hospital for observation under any order of a district judge made in accordance with section 38-402, *the* person may be kept in *the state* hospital not exceeding the maximum length of time specified in *the* order, during which time the superintendent and physicians of *the state* hospital shall give the person examinations, tests, and observation and treatment, if any, *which* they *consider* necessary to ascertain and improve his mental condition. *If* it *appears* to *the* superintendent and physicians, before the expiration of *the* maximum time specified in *the* order, that *the* time is not sufficient for them to determine or improve the mental condition of *the* person, the superintendent shall so notify in writing the district judge who made *the* order. *The* district judge or any district judge sitting or acting in his place, shall then make a supplemental order authorizing the detention of *the* person in *the* hospital for *an* additional length of time, not exceeding four (4) weeks in addition to the time specified in the original order. *The* written notice from the superintendent and *the* order shall be filed in the office of the clerk of the district court, and *the* clerk must immediately make a certified copy thereof and *send it* to the superintendent of *the state* hospital. *The* certified copy of *the* order *is* the authority for *the* superintendent to keep and detain *the* person in *the* hospital for the time specified in *the* order."

Section 23. Section 38-404, R.C.M. 1947, is amended to read as follows:

"38-404. **Release — certificate by superintendent.** If, while *a* person is being detained in the state hospital under *an* order, made in accordance with sections 38-402 and 38-403, the superintendent and physicians at *the state* hospital, from their examinations, tests and observations of *the* person, determine either that he is not disordered in his mind, or that he is disordered in his mind but not to such an extent as to justify *his commitment*, the superintendent shall release and discharge him from *the state* hospital. *A* certificate *of release and discharge*,

in duplicate, shall be made stating the reasons the person *was* released and discharged from *the state* hospital, *and* the date of discharge and release. *Each copy* shall be dated and signed by *the* superintendent. One (1) copy of *the* certificate shall be retained in the files of the *state* hospital and the other copy shall be *sent* to the clerk of the district court of the county in which the hearing of *the* person was *held,* and *filed* by *the* clerk as a part of the records of *the* proceeding."

Section 24. Section 38-405, R.C.M. 1947, is amended to read as follows:

"38-405. **If commitment advisable, procedure — disposition of certificates.** (1) If, while *a* person is being detained in the state hospital under *an* order, made in accordance with sections 38-402 and 38-403, the superintendent and physicians of the hospital, from their examinations, tests and observations determine that *the* person is disordered in his mind to such an extent as to justify *commitment* to *the state* hospital, the superintendent shall make out, in duplicate, a certificate so stating and also stating in as much detail as *he considers* necessary, the apparent cause or class of *the* disorder, its progress, the probable duration and condition of the disease and the probable result of any treatment which may be given him in *the state* hospital. Each copy of *the* certificate shall be signed by the superintendent and by each physician of the hospital who has taken part in the examinations, tests, and observations of *the* person.

(2) One (1) of *the* certificates shall be retained in the files of the *state* hospital and the other copy shall be *sent* to the clerk of the district court of the county in which the hearing was held. Upon receipt of *the* certificate by *the* clerk of the district court he shall file *the* certificate and call the *certificate* to the attention of the district judge who made the order for *the* person to be placed in *the state* hospital for observation, or to the attention of any district judge of the judicial district in which *the* county is situated, or to the attention of any district judge who is sitting or acting in place of the judge who made the order directing that *the* person be placed in *the state* hospital for observation. *As* soon as possible thereafter *the* district judge must make an order in duplicate that *the* person be committed to and confined in the state hospital. Both copies of *the* order must be delivered to the clerk of the court who must file and record one (1) *of the orders* and *send* the other to the superintendent of *the state* hospital which *is* the authority of *the* superintendent to confine *the* person in *the state* hospital. All of the provisions of section 38-208 applicable thereto apply to all orders made under this section."

Section 25. Section 38-406.2, R.C.M. 1947, is renumbered section 38-408.1, and is amended to read as follows:

"*38-408.1.* **Voluntary admission for at least sixty days authorized — application — earlier release — proceedings for judicial commitment — right to release — costs of commitment proceedings — transportation costs.** (1) Subject to the availability of suitable accommodations, the superintendent *of the state hospital* shall admit to the *state* hospital a person who is mentally ill or who has symptoms of mental illness for whom voluntary application is made in accordance with subsection (2) of this section. *Under this section, mental illness means a psychiatric or other disease which substantially impairs mental health.*

(2) An application for voluntary admission to the *state* hospital shall:

(a) Be on forms prescribed by the *state* hospital and furnished by the *state* hospital to the county attorney;

(b) Be signed before two witnesses by the prospective patient *seeking admittance,* or in the case of a minor, by his parent or guardian;

(c) Be certified by a licensed physician who has personally examined the prospective patient and believes he is mentally ill or has symptoms of mental illness or is in need of psychiatric evaluation and treatment; and

(d) Contain a statement by the prospective patient, or his parent or guardian that, unless earlier released on convalescent status or discharged, the prospective patient will remain in the *state* hospital for diagnosis and treatment for at least sixty (60) days.

(3) If in the opinion of the superintendent detention of the patient for the entire sixty (60) day period is unnecessary, the superintendent may release or discharge the patient.

(4) Proceedings for judicial commitment shall not be commenced with respect to a person admitted on voluntary application unless after the sixty (60) day period of compulsory detention the patient requests his release in writing or whose release is requested in writing by his parent, guardian, spouse, or next of kin. Upon receipt of *the* request, the patient shall be released within five (5) days after the request is received unless the superintendent files a petition with the district court of the third judicial district in the county of Deer Lodge certifying that in his opinion the release of the patient would be unsafe for the patient or others, or that the patient is in need of care and treatment in the *state* hospital and because of his illness lacks sufficient insight or capacity to make responsible decisions with respect to his hospitalization.

(5) The superintendent of the *state* hospital shall inform patients of their right to release as provided in this section.

(6) The costs of commitment proceedings under this section shall be paid by the county of the patient's residence. When the proceedings are completed, the clerk of the district court for the county of Deer Lodge shall send all papers relating to the proceedings to the clerk of the district court of the county of the patient's residence.

(7) The costs of transportation to the *state* hospital under this section shall be provided by the patient, his parents, guardian, or the welfare department of the county of the patient's residence."

Section 26. Section 38-407, R.C.M. 1947, is amended to read as follows:

"38-407. **Trial by jury, when.** *When an* order is made under section 38-405 committing *a* person to the state hospital, *and the* person, or any relative, friend, or guardian of *the* person, is dissatisfied with *the* order, he may, within ten (10) days after the making of *the* order, demand the question of his sanity be tried by a jury, before the district court of the county from which he was committed. *The* demand must be made in writing, served upon the county attorney, and filed with the clerk of the dis-

trict court of *the* county. Upon demand being made, served, and filed, a trial must be *held* in the manner provided by section 38-213, and all of the provisions of *that* section applicable thereto apply to *the* trial and proceedings in connection therewith."

Section 27. Section 38-408, R.C.M. 1947, is amended to read as follows:

"38-408. **Duty of clerk of district court.** *When an* order made by a district judge under section 38-405 has been filed by a clerk of the court, *the* clerk must immediately notify in writing the county board of public welfare of *the* county *where* the order *was made.*"

Section 28. Section 38-502, R.C.M. 1947, is amended to read as follows:

"38-502. **Convalescent leave of patients from Warm Springs state hospital.** The superintendent of *Warm Springs* state hospital may grant a convalescent leave to a patient under general conditions prescribed by the department of institutions."

Section 29. Section 38-503, R.C.M. 1947, is amended to read as follows:

"38-503. **Permitting patient to leave.** A patient of the state hospital may be permitted by the superintendent to leave the institution on convalescent leave and remain in the custody of a parent, relative, legal guardian, or other person."

Section 30. Section 38-504, R.C.M. 1947, is amended to read as follows:

"38-504. **Termination of convalescent leave.** All patients, while on convalescent leave, remain in the legal custody, and under the control of the department. *At* any time during *the* convalescent leave, upon evidence satisfactory to the superintendent or to the department that convalescent leave should terminate, *the* patient must be returned to the state hospital. The written order of the department, certified by the superintendent of the hospital, *is* sufficient warrant to *an* officer to retake and return *the* patient to actual custody in the state hospital."

Section 31. Section 38-505, R.C.M. 1947, is amended to read as follows:

"38-505. **Report by person under whom patient is placed on convalescent leave.** The person *with* whom *the patient is* placed on convalescent leave shall report the physical, moral, and mental condition of the patient to the superintendent either in person or by writing as often and as fully as the superintendent may require, and subject to *the* recommendations and regulations *which* the department may determine. In case of failure to report on request, the inmate may be returned to the state hospital. The patient shall be accessible to representatives of the *state* hospital."

Section 32. Section 38-506, R.C.M. 1947, is amended to read as follows:

"38-506. **Support of patient placed on convalescent leave, discharged by lapse of time.** *(1) When the* state hospital *places* a patient on convalescent leave, *it is* not liable for his support while on convalescent

leave. *Liability devolves* upon the legal guardian, parent, or person under whose care the patient is placed on convalescent leave, or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found, *are* responsible for providing relief and care for *the* patient on convalescent leave who is unable to maintain himself, or who is unable to secure support from the person under whose care he was placed on convalescent leave, *like* any other person in need of relief and care, under the public welfare laws. The person under whose care the patient is placed on convalescent leave or any other person legally liable for his support, shall, if *the* convalescent leave *is* revoked, be liable for any expense incurred by the state or county in procuring the return of *the* patient to the hospital.

(2) The superintendent of the state hospital shall place on convalescent leave any patient under his control when he believes it *is in* the best interests of *the* patient and society to do so. If *a* patient placed on convalescent leave *is* not returned to *the* institution within a period of two (2) years, he *is considered* discharged therefrom and entry shall be made accordingly in the records of the institution. *If a* patient who has escaped from *the* institution *is* not returned thereto within two (2) years, he *is considered* discharged therefrom and an entry *shall be* made accordingly in the records of *the* institution. *When* a patient *is* discharged whether by convalescent leave continuing for a period of two (2) years or by having escaped and not having been returned within two (2) years, the superintendent of the state hospital shall immediately notify in writing the judge of the court by which *the* patient was committed. *A* person so discharged *may not* be recommitted to the state hospital except by court order and upon proceedings as required by law for commitment in the first instance. *This section does not restore the* civil rights of persons so discharged or *restore* sanity, or *relieve* the superintendent of the state hospital from the obligation of supervising patients on convalescent leave to the extent of available facilities and finances."

Section 33. Section 38-507, R.C.M. 1947, is amended to read as follows:

"38-507. **Clothing for patient on convalescent leave or discharged patient.** *A* patient or inmate *may not* be discharged or placed on convalescent leave from the state hospital without suitable clothing adapted to the season in which he is discharged."

Section 34. Section 69-6403, R.C.M. 1947, is amended to read as follows:

"69-6403. **Application for sterilization — hearing — showing required of applicant — designation of surgeon — written consent.** *(1) The department of institutions shall* receive applications by or on behalf of persons covered by this act to be sterilized. Upon receipt of *the* application, which shall be in any form calculated to apprise the board *of eugenics* of the desire of the applicant to be sterilized, the board shall conduct a hearing at which the applicant must be present in person for examination by the board and evidence must be presented to establish:

(a) Whether the applicant is one of the group covered by this act;

(b) Whether it would be in the best interest of the applicant and the state for the applicant to be sterilized;

(c) Whether evidence by a qualified clinical geneticist or by someone recognized by *the* board of eugenics as having expertise in clinical genetics indicates that sterilization is desirable and beneficial to the applicant;

(d) Whether the applicant, whether or not a minor, is capable of understanding and does understand the nature and consequences of the medical treatment he or she will undergo and with *this* understanding voluntarily consents thereto;

(e) Whether *the* medical treatment can be carried out without unreasonable risk to the life and health of the applicant;

(f) The method and manner in which *the* sterilization is to be accomplished.

(2) At *the* hearing the applicant shall designate the person to perform *the* sterilization who may be any physician and surgeon licensed to practice medicine in the state. *The* applicant at *the* hearing shall sign a written voluntary consent to *the* sterilization in the form to be provided by the *department of institutions."*

Section 35. Section 69-6404, R.C.M. 1947, is amended to read as follows:

"69-6404. **Findings prerequisite to approval — certificate.** *(1)* If, after the hearing, the board *of eugenics finds*:

(a) That the applicant is one of the group covered by this act;

(b) That it would be in the best interest of the applicant and the state that the applicant be sterilized;

(c) That the applicant, whether or not a minor, is capable of understanding and does understand the nature and consequences of the medical treatment he or she will undergo and with such understanding voluntarily consents in writing thereto;

(d) That such medical treatment can be carried out without unreasonable risk to the life and health of the applicant;

(e) That the method and manner in which *the* sterilization is to be accomplished is by such procedures and under such conditions as are medically approved according to the standards for such procedures in the state;

(f) That the person designated to perform *the* sterilization is one qualified under this act to perform the *sterilization*;

(g) That the applicant has in writing voluntarily consented to *the* medical treatment;

(h) That the parents or guardian, if any exist, have given written consent to the sterilization.

(2) It shall make a certificate reciting *the* findings and signed by all members of the board. The original of *the* certificate shall be sent *by the department of institutions* to the physician designated by the applicant to perform the medical treatment; one copy thereof shall be sent to the applicant or his or her parent, guardian or custodian and one copy to remain in the permanent files of the *department of institutions*. Upon receipt of the certificate the physician designated to perform the medical treatment may proceed with *the* medical treatment in accordance with the certificate. Arrangements for *the* medical treatment shall be made between the physician designated in the certificate and the applicant or his or her parent, guardian, or custodian."

Section 36. Section 69-6405, R.C.M. 1947, is amended to read as follows:

"69-6405. **No civil or criminal liability arises from sterilization — exception.** Neither the members of the board of eugenics nor any physician and surgeon or assistant concerned nor any other person participating in the execution of the provisions of this act in conformity with the board's certificate *is* thereafter liable either civilly or criminally to anyone for having performed or authorizing the performance of *the* sterilization. *The* physician or surgeon or assistant concerned *is* liable for any damage caused by the negligent performance of *the* sterilization in accordance with the general law of the state covering such negligence."

Section 37. Section 69-6406, R.C.M. 1947, is amended to read as follows:

"69-6406. **Certificate that applicant does not possess capacity for voluntary consent to sterilization — person disregarding certificate guilty of misdemeanor and civilly liable—exception.** If, upon *the* hearing, the board *of eugenics finds* that the applicant does not possess the capacity for voluntary consent to sterilization, as set forth in section 69-6403 and section 69-6404, the board shall make a certificate setting forth *that* finding. *The department of institutions* shall *send the original* to the physician designated by the applicant to perform *the* medical treatment; one copy shall be sent to the applicant or his or her parent, guardian or custodian, and one copy to remain in the permanent files of the *department. After the certificate is filed, it is* unlawful, and punishable as a misdemeanor, for any person to perform or assist in the performance of a sterilization of the applicant or to produce or assist directly or indirectly in the procurement of such sterilization on *the* applicant, and any such person shall be civilly liable for damages for the performance or the procuring directly or indirectly of the performance of eugenical sterilization upon *the* applicant. However, nothing in this act shall prohibit a physician, at the request of the applicant, his or her parent, guardian or custodian, from performing a sterilization procedure on the applicant for purely medical as distinguished from eugenical reasons."

Section 38. Section 80-1401, R.C.M. 1947, is amended to read as follows:

"80-1401. **Purpose of department.** *The* department of institutions *shall* utilize at maximum efficiency the resources of state government in a co-ordinated effort to restore the physically or mentally disabled, to rehabilitate the violators of law, to sustain the vigor and dignity of the

aged, to provide for children in need of temporary protection or correctional counseling, to train children of limited mental capacity to their best potential, to rededicate the resources of the state to the productive independence of its now dependent citizens, and to co-ordinate and apply the principles of modern institutional administration to the institutions of the state."

Section 39. Section 80-1402, R.C.M. 1947, is amended to read as follows:

"80-1402. **Definition of terms.** *Unless* the context *requires* otherwise, *in title 80:*

(1) "Department" means the department of institutions *provided for in title 82A, chapter 8.*

(2) "Director" means the director of institutions *provided for in section 82A-801.*

(3) "Board" means the board of institutions *provided for in section 82A-806.*

(4) "Institution" means any of the institutions listed in section 80-1403."

Section 40. Section 80-1403, R.C.M. 1947, is amended to read as follows:

"80-1403. **Institutions in department.** *(1)* The following institutions are in the department:

(a) Galen state hospital

(b) Montana veterans' home

(c) State prison

(d) Montana children's center

(e) Mountain View school

(f) Pine Hills school

(g) Boulder river school and hospital

(h) Warm Springs state hospital

(i) Montana center for the aged

(j) Swan river youth forest camp

(k) Eastmont training center

(l) Any other *institution which provides* care and services for juvenile delinquents including but not limited to youth forest camps and juvenile reception and evaluation centers.

(2) A state institution may *not* be moved, discontinued, or abandoned without prior consent of the legislative assembly."

Section 41. Section 80-1405, R.C.M. 1947, is amended to read as follows:

"80-1405. **Powers and duties of department.** The *department* shall:

(1) Adopt rules for the admission, custody, transfer, and release of residents of institutions except as otherwise provided by law. However, no such rules shall amend or alter the statutory powers and duties of the state board of pardons.

(2) Subject to the *functions of the department of administration,* lease or purchase lands for use by institutions, and classify *those* lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands, and the relative value of agricultural programs in the treatment or rehabilitation of the *persons* confined in *the* institutions.

(3) Utilize the staff and services of other state agencies and units of the university of Montana, within their respective statutory functions, to carry out the purposes of this act.

(4) Propose programs to the legislative assembly to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions.

(5) Encourage the establishment of programs at the local level for the prevention and rehabilitation of physical and mental disability."

Section 42. Section 80-1406, R.C.M. 1947, is amended to read as follows:

"80-1406. **Warden and superintendents of institutions.** The warden or superintendents of institutions in the department are responsible for the immediate management and control of their respective institutions, subject to the general policies and programs established by the department."

Section 43. There is a new section to be numbered 80-1407.1, R.C.M. 1947, which reads as follows:

80-1407.1. **Powers and duties of board — hearings.** (1) The board of institutions shall:

(a) Act in an advisory capacity to the department. "Advisory capacity," as used in this subsection, means the board may furnish advice, gather information, make recommendations, and does not mean administering a program or function or setting policy.

(b) Hear grievances of residents of institutions within the department or employees of the department, as provided for in this subsection. A resident of an institution within the department or an employee of the department who has a grievance, and has exhausted all other administrative remedies within the department, is entitled to a hearing before the board for a resolution of the grievance. A grievance of an employee means an employee's dissatisfaction concerning a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action. A grievance of a resident means any serious matter affecting his care or treatment.

(2) No actions by the board may infringe upon the statutory functions of the board of pardons.

Section 44. Section 80-1410, R.C.M. 1947, is amended to read as follows:

"80-1410. **Establishment of juvenile correctional facilities.** The department, within the annual or biannual budgetary appropriation, may establish, maintain, and operate facilities to *properly* diagnose, care for, train, educate, and rehabilitate children in need of these services. *The children must be ten (10) years of age or older and under twenty-one (21) years of age. The facilities include but are not limited* to the Mountain View school, the Pine Hills school, and the youth forest camp."

Section 45. Section 80-1411, R.C.M. 1947, is amended to read as follows:

"80-1411. **Control and management of juvenile correctional centers — rules — special programs.** *The* facilities provided for in section *81-1410* shall exercise their functions under the supervision, and general management of the department. Except where otherwise provided by law, the department by *rules* shall establish standards of care, policies of admission, transfers, discharge, and aftercare supervision in order to provide adequate care for children and adequate service to the courts. The department shall develop special programs within each facility which are adaptable to the particular needs of its operation."

Section 46. Section 80-1412, R.C.M. 1947, is amended to read as follows:

"80-1412. **Youth forest camp — work program.** In the case of a youth forest camp, a work program shall be provided by the *department of natural resources and conservation*, and shall be carried out with cooperation between *that department* and the camp superintendent."

Section 47. Section 80-1413, R.C.M. 1947, is amended to read as follows:

"80-1413. **Participation by governing boards in research programs.** The *department may direct a* penal, corrective, or custodial institution of the state to participate in and co-operate with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana, or by any foundation or agency thereof, in the fields of science, health, education, and natural resources. *These* programs may include the voluntary participation of the inmates of the institution in testing and experimental work conducted as a part thereof. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation thereof, and shall not become a part of the regular budgeted operation of the institution."

Section 48. Section 80-1414, R.C.M. 1947, is amended to read as follows:

"80-1414. **Aftercare agreement to be signed by child before release from juvenile facility to custody of department.** A child released by the department from one of the state juvenile facilities to the supervision, custody, and control of the department shall, before *his*

release, sign an aftercare agreement containing the terms and conditions under which the child is released."

Section 49. Section 80-1415, R.C.M. 1947, is amended to read as follows:

"80-1415. **Control over minor so released vested in department.** The department has control over a child released *under section 80-1414* until he attains the age of eighteen (18) years, subject, however, to the general jurisdiction of the various courts of Montana for acts committed by *the* child while under the control of the department."

Section 50. Section 80-1416, R.C.M. 1947, is amended to read as follows:

"80-1416. **Detention of child who violates aftercare agreement — delivery on request to department.** A child who violates the terms and conditions of his aftercare agreement may be detained, by the department or by *a* law officer of the state, county, or city of the state, upon certificates in writing to *the* officer by the department to the effect that *the* child has violated the terms and conditions of his aftercare agreement. Upon detention by *the* law officer *the* child shall, on request, be delivered to the custody of the department, *and the department* may*:*

(1) *Return the* child to one of the juvenile facilities of the state*;* or

(2) *Continue the* child under the supervision of the *department."*

Section 51. Section 80-1501, R.C.M. 1947, is amended to read as follows:

"80-1501. **Industrial activities permitted at institutions — powers of department — incentive pay to inmates.** The department of institutions may*:*

(1) Establish industries in institutions which will result in the production or manufacture of goods that may be needed by institutions and other state agencies and that will assist in the rehabilitation of residents in institutions*;*

(2) Print catalogs describing goods manufactured or produced by institutions and distribute the catalogs*;*

(3) Fix the sale price for goods produced or manufactured at institutions. *Prices* shall not exceed prices existing in the open market for goods of comparable quality.

(4) Require institutions to purchase needed goods from other institutions*;*

(5) Provide for the repair and maintenance of property and equipment of institutions by residents of institutions*;*

(6) Provide for the repair and maintenance at an institution of furniture and equipment of any state agency*;*

(7) Provide for the manufacture at an institution of motor vehicle license plates and other *related* articles*;*

(8) In case of emergency, and with the approval of the *department*, sell agricultural products and livestock on the open market. Receipts from *these* sales shall be deposited in the general fund.

(9) Provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions;

(10) Pay an inmate of the state prison an amount not exceeding fifty cents ($.50) per day as an incentive for the performance of work, based on the following criteria:

(a) Knowledge and skill

(b) Attitude toward authority

(c) Physical effort

(d) Responsibility for equipment and materials

(e) Regard for safety of others. All *these* wages shall be paid from receipts from the sale of goods produced or manufactured at the institution where the resident resides."

Section 52. Section 80-1601, R.C.M. 1947, is amended to read as follows:

"80-1601. **Institutions subject to per diem charge.** The department of institutions shall collect and process per diem payments for the care of residents in the following institutions and for the care of those persons in foster homes or group homes under *provisions* of the department:

(1) Montana children's center

(2) Warm Springs state hospital

(3) Boulder river school and hospital

(4) Galen state hospital

(5) Montana veterans' home

(6) Montana center for the aged

(7) Eastmont training center."

Section 53. Section 80-1603, R.C.M. 1947, is amended to read as follows:

"80-1603. **Monthly assessment of charges — annual computation of rate — investigation — claim of state — review — deposit of receipts.** (1) The department shall assess monthly against each resident or responsible person, the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, based upon financial information given to the department during its investigation. The per diem shall be computed on July 1 of each year by the *department*.

(2) For the purpose of *these* investigations, every agency of the state is required to render all reasonable assistance to the department in obtaining all information necessary for the proper implementation of the purposes of *this* investigation. *A* representative of the department, duly authorized by the director, *may* administer oaths, take testimony, subpoena and compel the attendance of witnesses and the production of books, papers, records, and documents in connection with the duty of securing payments for support as provided by this act. *A* person *who fails* to obey *the* subpoena, upon petition of the department, to any judge of the district court of the state, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, after *the* hearing, may order that the subpoena be obeyed, or if it is made to appear to the judge that the subpoena was for any reason inappropriately issued, may dismiss the petition. *A* person who fails to obey the subpoena when ordered to do so by the judge may be punished for contempt of court on application of the district court by the *department*.

(3) The state *has* a claim against the estate of *a* patient and against the estate of *a* responsible person, for *an* amount due to the state at the date of death *of the* resident or *the responsible* person. *The* claim against the estate of *a* responsible person *does* not have priority against *the* estate for the amount necessary to rear and educate surviving children of the responsible person.

(4) The attorney general shall collect any claim which the state may have against such estate. *This* claim *may not* be enforced against any real estate while it is occupied as a home by the surviving spouse or the resident or responsible person.

(5) If a resident or responsible person disagrees with the determination of the department as to the ability of *the* resident or responsible person to pay any part of the per diem charge, an appeal may be filed within thirty (30) days of *the* determination with the board of institutions. If *the* resident disagrees with the determination of the appeal by the board of institutions, an appeal may be filed *in* any court of record in Montana having jurisdiction of the resident or responsible person liable for *the* payment.

(6) The department may, at any time, review and change *a* determination for per diem payments. In any case, however, *a* resident of an institution *may not* be released by reason of the nonpayment of the per diem, if in the judgment of the superintendent of the institution at which he is a resident, *this* release is medically inadvisable.

(7) *A* per diem *payment* received by the department shall be deposited in the state treasury to the credit of the general fund."

Section 54. Section 80-1909, R.C.M. 1947, is amended to read as follows:

"80-1909. **Establishment of intensive rehabilitation center authorized.** Within the budgetary limits provided by law, the *department of institutions may* establish on property owned by the state, on which prison facilities are or may be located, a prison facility designed to *segregate* certain types of prisoners."

Section 55. Section 80-2105, R.C.M. 1947, is amended to read as follows:

"80-2105. **Commitment of resident to Mountain View school or Pine Hills school.** *When* a child *who resides* at the *Montana* children's center becomes incorrigible, or *when* his conduct endangers the welfare of the other residents of the home or any other person, the superintendent, with the consent of the department, shall petition the district court for commitment of the child to the *Mountain View* school or the *Pine Hills* school."

Section 56. Section 80-2106, R.C.M. 1947, is amended to read as follows:

"80-2106. **Transfer of child to mental institution — notice to parents or guardian.** (1) The superintendent of the Montana children's center may, with the approval of the department, transfer a child to *Warm Springs* state hospital or *Boulder river* school and hospital. The transfer order must be certified by a licensed physician that he has personally examined the child and is of the opinion that he is mentally ill or mentally retarded, as the case may be.

(2) Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the *department* shall send notice of the proposed transfer to the parents or legal guardian of the child, and to the district court which committed the child. In the case of an emergency transfer, the *department* shall send notice within seventy-two (72) hours after the time of transfer."

Section 57. Section 80-2213, R.C.M. 1947, is amended to read as follows:

"80-2213. **University aid to residents of schools.** The department may, on *the* recommendation of the superintendent, authorize a resident of the *Mountain View* school or *Pine Hills* school who has completed high school, and who is otherwise eligible, to receive up to eight hundred dollars *($800)* per year toward his expenses incurred in attending a unit of the university of Montana. The money may be used for transportation, clothing, books, board and room, and shall be paid in the same manner as other expenses of the school. The university of Montana shall not charge any fees or tuition for *these* residents. No more than eight *(8)* residents of each school may receive these benefits each year. The department shall notify the board of regents *before* August 1 of each year of the residents it has designated to receive the benefits for the forthcoming school year."

Section 58. Section 80-2310, R.C.M. 1947, is amended to read as follows:

"80-2310. **Mental retardation center at Glendive—services provided.** The mental retardation center at Glendive *is the* "Eastmont training center" for residential and outpatient care of mentally retarded persons residing in Montana. The center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state. The center shall provide services similar to those provided at *Boulder river* school and hospital. *However,* the center *may* not be a duplication of *Boulder river* school and hospital, but shall,be an extension thereof."

Section 59. Section 80-2312, R.C.M. 1947, is amended to read as follows:

"80-2312. **Supervision of Glendive center — transfers to Boulder river school and hospital.** The *department* shall *establish and direct the* services to be provided at the center. The *department* shall provide for temporary transfers from the Eastmont training center to the Boulder river school and hospital for special medical, psychological, surgical, and other services."

Section 60. Section 80-2401, R.C.M. 1947, is amended to read as follows:

"80-2401. **Location and function of hospital.** The institution located at Warm Springs is the "Warm Springs state hospital." The *functions* of the state hospital *are* the care and treatment of mentally ill persons and alcoholics."

Section 61. Section 80-2401.1, R.C.M. 1947, is amended to read as follows:

"80-2401.1. **Definition of terms.** *Unless* the context *requires* otherwise, *in this act*:

(1) "Public mental health facility" *means* any public service or group of services *operated by* the department of institutions offering mental health care on an inpatient or outpatient basis to the mentally ill.

(2) "Community comprehensive mental health center" *means* a facility, not necessarily encompassed within one building, offering at least the following five (5) basic mental health services to the public:

(a) Twenty-four (24) hour inpatient care;

(b) Part-time hospitalization;

(c) Outpatient service;

(d) Emergency service;

(e) Consultation and education in mental health.

(3) "Mental health clinic" *means* an outpatient facility offering mental health care to the public."

Section 62. Section 80-2402, R.C.M. 1947, is amended to read as follows:

"80-2402. **Qualifications of superintendent.** The superintendent of the Warm Springs state hospital shall be a licensed physician who has fulfilled the residency requirements of the American Board of Psychiatry and Neurology in the speciality of psychiatry."

Section 63. Section 80-2403, R.C.M. 1947, is amended to read as follows:

"80-2403. **Functions of department.** The department shall:

(1) Take cognizance of matters affecting the mental health of the citizens of the state;

(2) Initiate preventive mental hygiene activities of the state's mental health program, including but not limited to, the implementation of mental health care and treatment, prevention, and research as can best be accomplished by community centered services. Such means shall be utilized *to* initiate and operate these services in co-operation with local agencies as established under sections *80-2406 and 80-2407.*

(3) Make scientific and medical research investigations relative to the incidence, cause, prevention, and care of mental illness;

(4) Collect and disseminate information relating to mental hygiene;

(5) Prepare a comprehensive plan for the development of public mental health services in the state. *The* public mental health services shall include, but not be limited to, community comprehensive mental health centers, mental hygiene clinics, traveling service units, consultative and educational services.

(6) Provide by regulation for the examination of persons, who apply for examination or who *are* admitted either as inpatients or outpatients into *Warm Springs* state hospital or other public mental health facility under the supervision and control of the *department*, for the purpose of diagnosing and prescribing treatment of mental illness;

(7) Receive from agencies of the United States and other agencies, persons or groups of persons, associations, firms or corporations, grants of money, receipts from fees, gifts, supplies, materials, and contributions, for the development of mental health services within the state."

Section 64. Section 80-2405, R.C.M. 1947, is amended to read as follows:

"80-2405. **Department to control public mental health programs — establishment of standards, qualifications and compensation — compliance with federal guidelines.** The department shall control the public mental health programs which receive any state assistance, by *adopting* rules and standards for providing mental health facilities and services. It shall set minimum standards for programs, *and* establish appropriate qualifications and compensation scales and personnel policies for persons employed in *these* programs. All public mental health facilities and services shall, subject to the approval of the department, comply with existing federal guidelines and with requirements which will enable them to qualify for available matching funds."

Section 65. Section 80-2406, R.C.M. 1947, is amended to read as follows:

"80-2406. **Clinics and community services.** (1) The *department* may establish and conduct community comprehensive mental health centers, mental health clinics, and other facilities in cities, towns, and areas of the state for the purpose of aiding in the prevention, diagnosis, and treatment of mental illness. Such centers, clinics, or other facilities may be provided directly by state agencies or indirectly through contract or co-operative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons or hospitals, under rules *adopted* by the *department.*

(2) State funds specifically appropriated for regional mental health service programs shall not exceed fifty per cent (50%) of the total expenditures of the programs."

Section 66. Section 80-2407, R.C.M. 1947, is amended to read as follows:

"80-2407. **Mental health regions.** (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the board of health *and environmental sciences* under sections 82-3314 to 82-3318, and the federal Community Mental Health Centers Act.

(2) Upon the establishment of the mental health regions, the county commissioners in each of the various counties in a region shall designate a person from their respective county to serve as a representative of the county on a regional mental health board. *The* board shall be established under guidelines adopted by the *department.* All appointments to *the* board shall be for terms of two (2) years.

(3) The duties of *an* organized regional mental health board include:

(a) Annual review and evaluation of mental health needs and services within *the* region;

(b) Submission to the *department* and to each of the participating counties within the region of plans and budget proposals to provide and support mental health services within the region;

(c) Establishment of a recommended proportionate level of financial participation by each of the counties involved in the provision of mental health service within the limits of this section;

(d) Receipt and administration of such moneys and other support as are made available for the purpose of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations, and other support.

All funds so received by the board shall be used to carry out the purposes of this act.

(e) Supervision by appropriate administrative staff personnel of the operation of community mental health services in the region;

(f) Keeping all records of the board and making reports *which are* required.

(4) Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expense incurred in attending meetings and in the discharge of other board duties when assigned by the board.

(5) The regional board of mental health may submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recom-

mended proportionate share, not later than June 10 in each year. If the board of county commissioners *includes* in the county budget the county's proportionate share of the regional board's budget, it shall be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region shall be derived from the county's general fund. *If* the general fund is insufficient to meet the approved budget, a levy not to exceed one (1) mill may be made on the taxable valuation in addition to all other taxes allowed by law to be levied on such property.

(6) The regional board of mental health, with the approval of the *department*, may establish a schedule of fees for mental health services supported by financial contributions of the region's participating counties. *The* fees shall be paid by each nonparticipating county for services rendered to the residents of *the* nonparticipating county. *The* fees may be received by the board and used to implement the budget and to provide services."

Section 67. Section 80-2409, R.C.M. 1947, is amended to read as follows:

"80-2409. **Availability of services.** The services of the department *are* available without discrimination on the basis of race, color, creed, or ability to pay, and shall comply with Title VI of the Civil Rights Act of 1964."

Section 68. Section 80-2410, R.C.M. 1947, is amended to read as follows:

"80-2410. **Mental health centers established — staffing.** *(1) There are* mental health centers in Miles City and Glasgow for the care and treatment of mentally ill persons residing in Montana. Each center shall be staffed with at least one *(1)* of each of the following:

(a) Psychiatrist;

(b) Psychologist;

(c) Psychiatric nurse or social worker.

(2) Each center shall provide the following services:

(a) Short term inpatient service;

(b) Partial inpatient service;

(c) Rehabilitation;

(d) Communities education."

Section 69. Section 80-2411, R.C.M. 1947, is amended to read as follows:

"80-2411. **Supervision of mental health centers.** The mental health centers shall be organized and supervised by the *department*, under rules authorized in section *80-1405."*

Section 70. Section 80-2501, R.C.M. 1947, is amended to read as follows:

"80-2501. **Location and function of center.** The institution located at Lewistown is the "Montana Center for the Aged." The primary function of the center is the care and treatment of senile persons who have been admitted to *Warm Springs* state hospital and subsequently transferred to the center. As used in this *chapter* "senility" means mental illness resulting from the aging process."

Section 71. Section 80-2502, R.C.M. 1947, is amended to read as follows:

"80-2502. **Transfer of patients to and from hospitals — notice to relatives.** With the approval of the department of institutions, *the Warm Springs* state hospital may transfer a patient to the center or from the center to the state hospital. With the approval of the department the state hospital may transfer a patient residing at the center to *Galen* state hospital. Unless a medical or psychiatric emergency exists, fifteen (15) days prior to the transfer the department shall notify the patient's parent, guardian, or spouse, or if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within seventy-two (72) hours after the time of transfer."

Section 72. Section 80-2604, R.C.M. 1947, is amended to read as follows:

"80-2604. **Primary function of Boulder river school and hospital and Eastmont training center.** The primary *functions* of the Boulder river school and hospital and the Eastmont Training center *are* the care, treatment, training, education, *and necessary medical treatment* of mentally retarded persons."

Section 73. Section 80-2606, R.C.M. 1947, is amended to read as follows:

"80-2606. **Functions of department.** The department of institutions *shall*:

(1) Take cognizance of persons affected by mental retardation in the state;

(2) Initiate preventive mental retardation activities in the state;

(3) Make scientific and medical investigations relative to the incidence, cause, prevention, *and* care of mental retardation;

(4) Collect and disseminate information relating to mental retardation;

(5) Prepare plans for the development of mental retardation services in the state;

(6) Establish and conduct clinics in cities and towns in the state for the diagnosis, evaluation, and treatment of mental retardation;

(7) Receive from federal and other agencies, private and public, grants of money for the development of mental retardation services within the state, and use *the money* for the purposes for which they were granted."

Section 74. Section 80-2608, R.C.M. 1947, is amended to read as follows:

"80-2608. **Administration — allocation of appropriated moneys — local services to mentally retarded.** (1) The department *may* purchase or provide services for mentally retarded persons through local nonprofit corporations. The department shall allocate to *these* local nonprofit corporations, for the purchase of services for mentally retarded persons, *the money which is* appropriated therefor. The corporations shall purchase services from public or private nonprofit sheltered workshops, day-care training centers, and other private and public facilities, universities, colleges, public schools, and preschool nurseries, *which have* approved facilities and *offer* an approved program. In case *these* approved facilities and services are not available in the community, the nonprofit corporations may develop, operate, and provide *the* services directly. Payment for *the* services by the department shall be in an amount not to exceed seventy-five per cent (75%) of the annual cost of the approved community-centered programs. Of the amounts appropriated by the legislature for the purchase of services for mentally retarded persons under the provisions of this section, a sum not to exceed ten per cent (10%) of *the* amounts appropriated may be used by the department for the purpose of purchasing *the* services without regard to matching requirements. In arriving at the cost of services, the department shall set a valuation on the personal services and materials in kind which are contributed to local agencies or institutions from which *the* services are purchased, but *the* contributions shall not exceed one-half (½) of the required community share of the cost of services. Funds allocated to the nonprofit corporations by the department shall be used only for those services that are not a responsibility of another agency.

(2) For the purposes of allocating *money* under this section, the nonprofit corporations shall submit to the department a proposed budget. *This* budget shall include proposed expenditures, including services *these* corporations intend to purchase from various local agencies or institutions that offer services for mentally retarded persons.

(3) Governmental units, including but not limited to, counties, municipalities, school districts, or state institutions of higher learning *may*, at their own expense, purchase services or furnish money, materials, and services for mentally retarded persons, through *these* nonprofit corporations."

Section 75. Section 80-2609, R.C.M. 1947, is amended to read as follows:

"80-2609. **Factors to be considered in approving or rejecting programs.** (1) In approving or rejecting community-centered programs for the purchase of services to mentally retarded persons, the department shall consider the following factors:

(a) The adequacy and utilization of existing facilities and programs in the community, such as public and private nonprofit sheltered workshops, public school programs, preschool nurseries, and day-care centers, and universities and colleges;

(b) The adequacy of participation by state services, including but not limited to, public welfare, public health, rehabilitation, and education;

(c) General community interest and participation;

(d) The establishment of programs for the prevention of institutionalization, and habilitation when they do not already exist.

(2) The *department* shall require the following in the community administration of this program:

(a) Each community-centered program shall be under the control and direction of a board of directors or trustees of a corporation not for profit.

(b) The members of the board of directors or trustees shall be representative of, but not limited to, public, private, or voluntary agencies, including political subdivisions of *the* state, which participate in a program for mentally retarded persons in the community.

(c) The community incorporated board shall make application annually to the department to participate in the state program for mentally retarded persons, and only programs shall be approved which meet the requirements set forth in subsection (1) of this section."

Section 76. Section 80-2610, R.C.M. 1947, is amended to read as follows:

"80-2610. **Rules — other powers of director incident to administration of community-centered services.** The director of institutions *may* adopt reasonable rules to govern the administrative proceedings and procedures necessary to carry out the provisions of this act. *The* rules may be amended or revoked from time to time. The director *may* also *adopt* standards for and supervise programs supported under this act, and prescribe the form of reports, budgets, holdings of meetings, investigations, and evaluations necessarily incident to the administration of this act."

Section 77. There is a new section to be numbered 82A-801.1, R.C.M. 1947, which reads as follows:

82A-801.1. **Functions of department.** The department and its units are responsible for the administration of laws relating to institutions, including, but not limited to, laws pertaining to:

(1) District youth guidance homes (title 10, chapter 11);

(2) Warm Springs state hospital (title 38, chapter 1);

(3) Examination and commitment of persons mentally deranged (title 38, chapter 2);

(4) Patient transfers (title 38, chapter 3);

(5) Examination of patients and voluntary admissions (title 38, chapter 4);

(6) Convalescent leave of patients (title 38, chapter 5);

(7) Voluntary sterilizations (title 69, chapter 64);

(8) Juvenile facilities (title 80, chapter 14);

(9) Institutional industries (title 80, chapter 15);

(10) Payments for care of patients (title 80, chapter 16);

(11) Galen state hospital (title 80, chapter 17);

(12) Montana veterans' home (title 80, chapter 18);

(13) State prison (title 80, chapter 19);

(14) Montana childrens center (title 80, chapter 21);

(15) Mountain View school and Pine Hills school (title 80, chapter 22);

(16) Boulder river school and hospital (title 80, chapter 23);

(17) Mental hygiene services and mental health centers (title 80, chapter 24);

(18) Montana center for the aged (title 80, chapter 25);

(19) Mental retardation programs (title 80, chapter 26);

(20) Probation, parole, and clemency (title 94, chapter 98).

Section 78. Section 82A-804, R.C.M. 1947, is amended to read as follows:

"82A-804. **Board of pardons — composition — allocation — designation.** (1) *There is a* board of pardons.

(2) The board consists of three (3) members.

(3) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108. However, the board may hire its own personnel, and section 82A-108(2)(d) does not apply.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 79. Section 82A-805, R.C.M. 1947, is amended to read as follows:

"82A-805. **Board of eugenics — composition — qualifications — allocation — designation.** (1) *There is a* board of eugenics.

(2) The board consists of seven (7) members, and one (1) ex officio member. The members are:

(a) Two (2) physicians licensed to practice medicine and surgery in this state to be appointed after considering the recommendation of the Montana medical association;

(b) One (1) lawyer licensed to practice law in this state to be appointed after considering the recommendation of the Montana bar association;

(c) Three (3) lay members;

(d) One (1) psychologist;

(e) The director of institutions, who is an ex officio member of the board.

(3) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 80. Section 82A-806, R.C.M. 1947, is amended to read as follows:

"82A-806. **Board of institutions — composition — qualifications — designation.** (1) *There is a* board of institutions.

(2) The board consists of five (5) members. The board members shall be selected so that not more than three (3) are from the same congressional district, and so that not more than three (3) are affiliated with the same political party. The members shall be qualified by aptitude, experience, and interest.

(3) The board is *allocated* to the department for administrative purposes only as prescribed in section 82A-108.

(4) The board is designated as a quasi-judicial board for purposes of section 82A-112."

Section 81. Section 95-3204, R.C.M. 1947, is amended to read as follows:

"95-3204. **Board of pardons.** *(1) The board of pardons shall administer the executive clemency, probation and parole system, and shall endeavor to secure the effective application and improvement of that system and the laws upon which it is based.*

(2) The board shall meet at least once each month at the state prison.

(3) The principal office of the board shall be in Deer Lodge."

Section 82. Section 95-3205, R.C.M. 1947, is amended to read as follows:

"95-3205. **Definitions.** *Unless* the context requires *otherwise, in this act:*

(1) "Board" means the board of pardons provided for in section 82A-804.

(2) "Probation" *means* the release by the court without imprisonment except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the board upon direction of the court.

(3) "Parole" *means* the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to its supervision.

(4) "Executive clemency" refers to the powers of the governor as provided by section *12* of article *VI* of the constitution of Montana."

Section 83. Section 95-3206, R.C.M. 1947, is amended to read as follows:

"95-3206. **Orders, records, report.** *Decisions* of the board *shall* be by majority vote. The orders of the board *are* not reviewable except as to compliance of terms of this act. The *department of institutions* shall keep a record of *the board's* acts and decisions available to the public. *However,* all social records, including the pre-sentence report, the preparole report and the supervision history obtained in the discharge of official duty by any member or employee of the board, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge. *The* board or a court may in its discre-

tion, *when* the best interest or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the report or any parts thereof by the prisoner or his attorney."

Section 84. Section 95-3207, R.C.M. 1947, is amended to read as follows:

"95-3207. **Administrator and employees.** The board shall *appoint an administrator* of probation and parole, hereinafter referred to as the *"administrator"* who *appoints*, with the approval of the board, an assistant *administrator*, probation and parole officers, and other employees required to administer this act. The *administrator is also the* interstate compact administrator. All other officers and employees of the board shall receive compensation for their services as fixed by the board. All officers and employees of the board shall hold office at the pleasure of the board and shall perform *the* duties *which* are imposed on them by law or by the board."

Section 85. Section 95-3210, R.C.M. 1947, is amended to read as follows:

"95-3210. **Duties of the administrator**. The *administrator is* the executive officer of the board. He *is* responsible for *any* investigation and supervision requested by the board or the courts. *The administrator, subject to the direction and supervision of the department under section 82A-108, shall:*

(1) Subject to the approval of the board, divide the state into districts, and assign probation and parole officers to serve in these districts and courts;

(2) Obtain any necessary office quarters for the staff in each district;

(3) Assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) Direct the work of the probation and parole officers and other employees assigned to him;

(5) Formulate methods of investigation, supervision, record keeping, and reports;

(6) Conduct training courses for the staff;

(7) Co-operate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole;

(8) Administer the interstate compact for the supervision of parolees and probationers."

Section 86. Section 95-3214, R.C.M. 1947, is amended to read as follows:

"95-3214. **Parole authority and procedure.** *(1)* The board shall release on parole, *by appropriate order*, any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided:

(a) That no convict serving a time sentence shall be paroled until he *has* served at least one-quarter (¼) of his full term, less good time allowances off, as provided in section *80-1905*; except that any convict serving a time sentence may be paroled after he *has* served, upon his term of sentence, twelve and one-half (12 ½) years.

(b) No convict serving a life sentence shall be paroled until he *has* served twenty-five (25) years, less the good time allowances off, as provided in section *80-1905.*

(2) Within two (2) months after his admission and at such intervals thereafter as it *determines*, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of *and* physical and mental examinations *which* have been made.

(3) Before ordering the parole of any prisoner, the board shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency *or* a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

(4) The board may adopt other rules it *considers* proper or necessary, with respect to the eligibility of prisoners for parole, *and* the conduct of parole hearings or conditions to be imposed upon parolees. *When* an order for parole is issued it shall recite the conditions thereof."

Section 87. Section 95-3215, R.C.M. 1947, is amended to read as follows:

"95-3215. **Conditional release.** A prisoner *on parole who has* served one-fourth (¼) of his term or terms, less good time allowances *is considered* released on parole until the expiration of the maximum term or terms for which he was sentenced, less good time allowances as provided in section *80-1905."*

Section 88. Section 95-505, R.C.M. 1947, is amended to read as follows:

"95-505. **Psychiatric examination of defendant with respect to mental disease or defect.** *(1) When* the defendant has filed a notice of intention to rely on the defense of mental disease or defect excluding responsibility, or there is reason to doubt his fitness to proceed, or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause, the court shall appoint at least one (1) qualified psychiatrist or shall request the superintendent of *Warm Springs* state hospital to designate at least one (1) qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant. The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding sixty (60) days or such

longer period as the court determines to be necessary for the purpose, and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(2) In *the* examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

(3) The report of the examination shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis of the mental condition of the defendant;

(c) If the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense;

(d) When a notice of intention to rely on the defense of irresponsibility has been filed, an opinion as to the ability of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law at the time of the criminal conduct charged; and

(e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(4) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether *the* unwillingness of the defendant was the result of mental disease or defect.

(5) The report of the examination shall be filed (in triplicate) with the clerk of court, who shall *deliver copies* to the county attorney and to counsel for the defendant."

Section 89. Section 95-506, R.C.M. 1947, is amended to read as follows:

"95-506. **Determination of fitness to proceed — effect of finding of unfitness — proceedings if fitness is regained.** *(1)* When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed *under* section 95-505, the court may make the determination on the basis of *the* report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon *the* hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection *(3)* of this section, and the court shall commit him to the custody of the superintendent of *Warm Springs* state hospital, to be placed in an appropriate institution of the department of institutions for so long as *the* unfitness *endures*. When the court, on its own motion or upon the

application of the superintendent of *Warm Springs* state hospital, or the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged, or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant committed to an appropriate institution of the department of institutions.

(3) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(4) The expenses of sending the defendant to the custody of the superintendent of the Montana state hospital, to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city or county bound to provide for and maintain him elsewhere."

Section 90. Section 95-507, R.C.M. 1947, is amended to read as follows:

"95-507. **Determination of irresponsibility on basis of report — access to defendant by psychiatrist of his own choice — form of expert testimony when issue of responsibility is tried.** *(1)* If the report filed *under* section 95-505 finds that the defendant at the time of the criminal conduct charged suffered from a mental disease or defect which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, and the court, after a hearing if a hearing is requested by the attorney prosecuting or the defendant, is satisfied that *the* mental disease or defect was sufficient to exclude responsibility, the court on motion of the defendant shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility.

(2) When either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert, selected by the one proposing the examination, *the* examiner shall be permitted to have reasonable access to the defendant for the purpose of *the* examination.

(3) Upon the trial, any psychiatrist who reported *under* section 95-505 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury shall not be informed that the psychiatrist was designated by the court or by the superintendent of *Warm Springs* state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant *is* competent to testify to an expert opinion with respect to the mental condition or responsibility

of the defendant, as distinguished from the validity of the procedure followed by, or the general scientific propositions stated by another witness.

(4) When a psychiatrist or other expert who has examined the defendant testifies concerning his mental condition, he *may* make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law or to have a particular state of mind which is an element of the offense charged. He *may* make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion."

Section 91. Section 95-508, R.C.M. 1947, is amended to read as follows:

"95-508. **Legal effect of acquittal on the ground of mental disease or defect excluding responsibility — commitment — release or discharge.** *(1)* When a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the court shall order him committed to the custody of the superintendent of *Warm Springs* state hospital to be placed in an appropriate institution for custody, care, and treatment. A person so confined shall have a hearing, unless waived, within fifty (50) days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his counsel and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released. According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary, or shall be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care and treatment.

(2) If the superintendent of *Warm Springs* state hospital believes that a person committed to his custody, *under* subsection *(1)* of this section, may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of *the* person in a report to the court by which *the* person was committed, and shall *send* a copy of *the* application and report to the county attorney of the county from which the defendant was committed. The court shall *then* appoint at least two (2) qualified psychiatrists to examine *the* person and to report within sixty (60) days, or a longer period *which* the court determines to be necessary for the purpose, their opinion as to his mental condition. To facilitate *the* examinations and the proceedings thereon, the court may *have the* person confined in any institution located near the place where the court sits, which may hereafter be designated by the superintendent of *Warm Springs* state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed *under* subsection *(2)* of

this section, and *the* testimony of the reporting psychiatrists *which* the court *considers* necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on conditions *which* the court determines to be necessary. If the court is not satisfied, it shall promptly order a hearing to determine whether *the* person may safely be discharged or released. *A* hearing *is considered* a civil proceeding and the burden *is* upon the committed person to prove by a preponderance of the evidence that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall *then* be discharged or released on conditions *which* the court determines to be necessary, or shall be recommitted to the custody of the superintendent of *Warm Springs* state hospital, subject to discharge or release only in accordance with the procedure prescribed above in subsections *(2)* and *(3)*.

(4) If, within five (5) years after the conditional release of a committed person, the court *determines*, after hearing evidence, that the conditions of release have not been fulfilled and that for the safety of *the* person or for the safety of others his conditional release should be revoked, the court shall *immediately* order him to be recommitted to the superintendent of *Warm Springs* state hospital, subject to discharge or release only in accordance with the procedure prescribed above in subsections *(2)* and *(3)*.

(5) A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon *the* application *is* the same as that prescribed above in the case of an application by the superintendent of *Warm Springs* state hospital. However, *an* application by a committed person need *not* be considered until he has been confined for a period of not less than six (6) months from the date of the order of commitment, and if the determination of the court *is* adverse to the application, *the* person shall not be permitted to file a further application until one (1) year has elapsed from the date of any preceding hearing on an application for his release or discharge."

Section 92. Section 95-2218, R.C.M. 1947, is amended to read as follows:

"95-2218. **Definitions.** *Unless* the context *requires* otherwise, *in this act*:

(1) "Board" means the state board of pardons *provided for in section 82A-804*;

(2) "State prison" means the Montana state prison at Deer Lodge;

(3) "Prisoner" means a person sentenced by a district court to a term of confinement in the state prison;

(4) "Sheriff" means any county sheriff including all deputies or other persons working under his direction or guidance;

(5) "Jail" means any county jail;

(6) "Warden" means the *warden* of the state prison."

Section 93. Section 95-2226, R.C.M. 1947, is amended to read as follows:

"95-2226. **Sheriff's responsibility — cancellation or revocation of furlough.** (1) The sheriff of the county to which the prisoner has been released *is* responsible for the activities of the prisoner according to the rules approved by the board. The sheriff shall keep the warden informed *of the prisoner's activities.*

(2) If any prisoner released from actual prison confinement under the furlough program *fails* to comply with the rules of the furlough program, *the* furlough shall be canceled and *the* prisoner shall be returned to prison to complete his sentence. *A* prisoner *may not* be returned to prison to complete his sentence without first being charged with a violation of the rules of the furlough program in the district court of the county in which *the* violation took place. *The* prisoner entitled to have counsel appointed to represent him at *the* hearing. *However,* if *the* prisoner, *except where* disabled from working *because of a* temporary illness, is unemployed for a period of thirty (30) days or more (after his availability for employment is reported in writing by the sheriff of the county to which *the* prisoner is released, to the *department of labor and industry's* office serving *the* area, and to the union to which *the* prisoner belongs, if any) the warden, upon request of *the* sheriff and upon a showing by the sheriff of *the* county in the district court *either* that: *(a) the* employee has been so unemployed, *(b) the* prisoner has become so disabled that he is unemployable, or *(c) the* prisoner is on an education furlough and *the* prisoner has demonstrated for a period of six (6) weeks or more that he is unable to benefit from *the* schooling or training, shall revoke *the* furlough and *the* prisoner shall be returned to the prison."

Section 94. Section 95-2305, R.C.M. 1947, is amended to read as follows:

"95-2305. **Proceedings upon finding of lack of mental fitness.** If it is found that defendant is mentally fit as provided in section 95-2304, the sheriff must execute the judgment; but if it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of *Warm Springs* state hospital, to be placed in an appropriate institution of the department of institutions for so long as *the* lack of fitness *endures.* When the court, on its own motion or upon application of the superintendent of *Warm Springs* state hospital, or the county prosecuting officer, or the defendant or his legal representative, determines after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the sheriff shall be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant, that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged."

Section 95. Section 95-2311, R.C.M. 1947, is amended to read as follows:

"95-2311. **Hearings requested by other states — power of board of pardons and department of institutions to hold.** The board of pardons and the department of institutions *shall* hold such hearings as may be requested by any other party state pursuant to section 95-2308, subsection 4 (f) of the Western Interstate Corrections Compact."

Section 96. Sections 38-108(1), 38-117, 38-119, 38-406.1, 69-6402, 80-1404, 80-1407 through 80-1409, 80-2207, 80-2311, 80-2601 through 80-2603, 82-903, 82A-802, 82A-803, 82A-807, 95-3208, 94-9851, R.C.M. 1947, are repealed.

Approved March 11, 1974.

CHAPTER NO. 121

AN ACT FOR THE CODIFICATION AND GENERAL REVISION OF THE LAWS RELATING TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-701, R.C.M. 1947, is amended to read as follows:

"10-701. **Definitions.** *As used in this act:*

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Agency" includes *a* person not related by blood or marriage to *a* minor child to be adopted. This act *does* not apply to the Montana *Children's Center.*

(3) "State department" means the department of social and rehabilitation services provided for in Title 82A, chapter 19."

Section 2. Section 10-801, R.C.M. 1947, is amended to read as follows:

"10-801. **Definitions.** *In this act:*

(1) "Child" means a person under twelve *(12)* years of age;

(2) "Day *care facility" means a* person, association, or place, incorporated or unincorporated, that receives for care during the day or part of the day three *(3)* or more children of separate families and continues this type of care for five *(5)* or more consecutive weeks. It *does not include a* person who limits care to children who are related to him by blood or marriage or under his legal guardianship, and all group facilities established chiefly for educational purposes;

(3) "Day *care center" means a* day care facility that receives seven *(7)* or more children for care for five *(5)* or more hours of the day for five *(5)* or more consecutive weeks. It may include facilities known as child care centers, nursery schools, day nurseries, and centers for the mentally retarded;